

# Memorandum

MIAMI-DADE  
COUNTY

**Date:** September 4, 2007

**To:** Honorable Chairman Bruno A. Barreiro  
and Members, Board of County Commissioners

**From:** George W. Burgess  
County Manager

**Subject:** Award Recommendation-Luggage Cart Concession Program  
RFP No. MDAD-08-05

Agenda Item No. 8(A)(1)(J)

## **RECOMMENDATION**

It is recommended that the Board approve the award of a Non-Exclusive Agreement (Agreement) to Smarte Carte, Inc., for the Luggage Cart Concession Program at Miami International Airport (MIA) and authorize the Mayor or his designee to execute the Agreement substantially in the form attached hereto, with the Exhibits on file with the Clerk of the Board, and exercise any renewal, termination or cancellation provisions therein.

## **SCOPE**

The services will be performed at Miami International Airport, located within Commission District 6.

## **FISCAL IMPACT/FUNDING SOURCE**

Payments are as follows:

- The Concessionaire shall pay to the County a MAG of \$225,000.00 or 32% of gross revenues; whichever is greater.

## **PAYMENT TO CONCESSIONAIRE**

- The County shall pay to the Concessionaire on a monthly basis, seventy cents (\$.70) per use of any carts used in the FIS Areas (Customs & Immigration) as these carts are provided free of charge to International passengers.

## **TRACK RECORD/MONITOR**

The track record for Smarte Carte, Inc., the current luggage cart operator, is satisfactory according to the Project Manager Patricia A. Ryan, Commercial Operations Division Director, who will monitor the contract.

## **BACKGROUND**

The Luggage Cart Concession Program RFP No. MDAD-08-05 was advertised on June 15, 2006, and issued on June 20, 2006, for a qualified firm to furnish, install, operate, manage, and maintain a first-class luggage cart concession program in all pre-security (landside) and post-security (airside) areas of the Airport. Luggage Cart Services shall be available for the traveling public twenty-four (24) hours a day, seven (7) days a week.

Responses to the advertisement were received from four (4) Proposers: Flight Services System; Top Cart Orlando LLC; Bagport America LLC; and Smarte Carte Inc.

The Selection Committee met and reviewed the four (4) proposals at a prescreening meeting held on November 13, 2006. At the meeting, the Committee was informed by the County Attorney's Office that one Proposer (Flight Services System) was found non-responsive and that Top Cart Orlando LLC; Bagport America LLC; and Smarte Carte, Inc., were found responsive. The Committee members then approved a motion to find the three firms responsible.

On November 13, 2006, the Selection Committee met at the Public Hearing meeting and heard presentations from the (3) three responsive Proposers. The Committee reviewed the technical proposal in conjunction with the oral presentation and proceeded to evaluate and rank the three (3) Proposers on their technical proposal.

The price constituted the second phase of the selection process. In determining the overall ranking, it was noted that the second-ranked firm (Smarte Carte, Inc.) was a local Proposer and was within 5% of the ranking obtained by the first-ranked non-local Proposer Bagport America LLC. As Smarte Carte, Inc., was eligible for local preference consideration, the local preference provisions were applied which resulted in Smarte Carte, Inc., being the first-ranked firm. Following authorization by the County Manager, a Negotiation Committee negotiated the fee of the Agreement, which resulted in an increase in the fee paid to MDAD from 25% initially proposed by Smarte Carte, Inc., to 32%.

**PROTEST:** On May 10, 2007 a Notice of Intent to Protest was filed by Weiss Serota Helfman Pastoriza Cole & Boniske, P.L. on behalf of Bagport America, LLC.

On May 23, 2007, Bagport America, LLC. withdrew its bid protest.

**PROJECT:** Luggage Cart Concession Program

**PROJECT NO.** RFP No. MDAD-08-05

**PROJECT LOCATION:** Miami International Airport

**COMPANY NAME:** Smarte Carte, Inc.

**TERM OF AGREEMENT:** Five (5) years

**OPTION(S) TO RENEW:** One (1) two (2) year extension.

**CONTRACT MEASURES:** ACDBE 20%

**CONTRACT MEASURES  
ACHIEVED:** ACDBE 23%

**ACDBE FIRM:** Global Baggage Protection Systems, Inc. - 23%

**COMPANY PRINCIPALS:** Michael J. Multer

Senior Director of Business Development

**GENDER, ETHNICITY &  
OWNERSHIP BREAKDOWN:**

Smarte Carte, Inc., is a subsidiary of  
SmarteCarte Corporation

**COMPANY LOCATION:**

4455 White Bear Parkway  
St. Paul, MN 55110-7641

**HOW LONG IN BUSINESS:**

36 Years

**PREVIOUS AGREEMENTS  
WITH THE COUNTY WITHIN  
THE PAST FIVE (5) YEARS:**

One (1) Agreement - Smarte Carte, Inc., is the current  
provider for the Luggage Carts at MIA

**ADVERTISEMENT DATE:**

June 15, 2006

**USING DEPARTMENT:**

Miami-Dade Aviation Department

**APPROVED FOR LEGAL  
SUFFICIENCY:**

Yes

  
Assistant County Manager



# MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro  
and Members, Board of County Commissioners

DATE: September 4, 2007

FROM: Murray A. Greenberg  
County Attorney

SUBJECT: Agenda Item No. 8(A)(1)(J)

Please note any items checked.

\_\_\_\_\_ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised

\_\_\_\_\_ 6 weeks required between first reading and public hearing

\_\_\_\_\_ 4 weeks notification to municipal officials required prior to public hearing

\_\_\_\_\_ Decreases revenues or increases expenditures without balancing budget

\_\_\_\_\_ Budget required

\_\_\_\_\_ Statement of fiscal impact required

\_\_\_\_\_ Bid waiver requiring County Manager's written recommendation

\_\_\_\_\_ Ordinance creating a new board requires detailed County Manager's report for public hearing

\_\_\_\_\_ Housekeeping item (no policy decision required)

\_\_\_\_\_ No committee review

Approved \_\_\_\_\_ Mayor

Veto \_\_\_\_\_

Override \_\_\_\_\_

Agenda Item No. 8(A)(1)(J)

09-04-07

**RESOLUTION NO.** \_\_\_\_\_

RESOLUTION AWARDING LUGGAGE CART  
CONCESSION AGREEMENT AT MIAMI  
INTERNATIONAL AIRPORT, RFP NO. MDAD 08-05  
TO SMARTE CARTE, INC.; AUTHORIZING THE  
MAYOR OR HIS DESIGNEE TO EXECUTE  
AGREEMENT AND ANY RENEWAL, TERMINATION,  
OR CANCELLATION PROVISIONS CONTAINED  
THEREIN

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board hereby awards the Luggage Cart Concession Agreement at Miami International Airport, RFP No. MDAD 08-05 to Smarte Carte, Inc., for a five (5) year term with one (1) option to renew for a two (2) year extension for a minimum annual guarantee of \$225,000 or a total percentage fee of 32% of gross revenues whichever is greater and providing that the County shall pay the concessionaire seventy cents (\$.70) per use of any carts in the FIS areas, as set forth in the attached memorandum from the County Manager; this Board authorizes the Mayor or his designee to execute the Agreement between Miami-Dade County and Smarte Carte, Inc., in substantially the form attached hereto with the Exhibits on file with the Clerk of the Board and made a part hereof and to exercise any renewal, termination, or cancellation provisions contained therein.

5

The foregoing resolution was offered by Commissioner  
who moved its adoption. The motion was seconded by Commissioner  
and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman	
Barbara J. Jordan, Vice-Chairwoman	
Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of September, 2007. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

RAW

Roy Wood

**CONCESSION  
AGREEMENT  
BY AND BETWEEN  
MIAMI-DADE COUNTY, FLORIDA  
AND  
SMARTE CARTE, INC.  
FOR LUGGAGE CART CONCESSIONS PROGRAM  
AT  
MIAMI INTERNATIONAL AIRPORT**

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**Attachments**

- Exhibit A – CMU Locations
- Exhibit A-1 Administrative Office – Support Space
- Exhibit B – Surety Performance and Payment Bond
- Exhibit C – Not Used
- Exhibit D – Performance Bond for MAG Requirements
- Exhibit E – Not Used
- Exhibit F – Tenant Airport Construction-Non-Reimbursable Procedures (TAC-N)  
Tenant Airport Construction Reimbursable Procedures (TAC-R)
- Exhibit G – Independent Audit Report
- Exhibit H – \*See note below
- Exhibit I – Monthly Report of Gross Revenues
- Exhibit J – List of Prohibited Items
- Exhibit K – Commercial Operations Tenant Handbook
- Exhibit L – Standards of Operation
- Exhibit M – Monthly Report of Free Luggage Carts in FIS area – FIS invoice

\*Executed Affidavits and Condition of Award Certificates will be added as Exhibit H.

## DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended.

The terms **"Agreement"** shall mean this Concession Agreement including all exhibits and attachments thereto and a part thereof entered into by the County and the Concessionaire.

The term **"Airport"** shall mean Miami International Airport (also MIA).

The term **"Airport Concession Disadvantaged Business Enterprises" or "ACDBE"** shall have the meaning described in entitled "Airport Concession Disadvantaged Business Enterprises".

The term **"Board"** shall mean Board of County Commissioners of Miami-Dade County.

The term **"Capital Improvement Program" or "CIP"** shall mean the Airport's construction program that will involve the refurbishment of terminal interiors, airline relocations, changes in access to the terminal and concourses, construction of new concession Locations, and other improvements throughout the Airport.

The term **"Cart Management Units" or "CMU"** shall mean the mechanical devices that dispense luggage carts upon payment of a fee by coin, currency or credit card.

The term **"Code"** shall mean the Code of Miami-Dade County, Florida.

The term **"Common Logistics Program"** shall mean a program to offer logistics support either on or off the Airport, which may include leasing of Airport property for storage; delivery services or equipment necessary to the operation of a common logistic system.

The term **"Concession"** shall mean the right of Concessionaire to receive rental fees for luggage carts in public areas and to receive payment from the County for free carts in the Federal Inspection Service Areas (FIS).

The term **"Concessionaire"** shall mean the entity which operates the Luggage Cart Concession Program at MIA.

The term **"Consumer Price Index" or "CPI"** shall mean that index published by the United States Department of Labor, Bureau of Labor Statistics known as the Consumer Price Index for all urban consumers ("CPI-U") in the U.S. Cities Average: All items.

The term **"County"** shall mean Miami-Dade County, Florida, a political subdivision of the State of Florida.

The term **"Date of Execution"** shall mean the day upon which this Agreement is executed by the County Manager of Miami-Dade County or his/her designee.

The term **"Days"** shall mean calendar days, unless specifically stated as other.

The term **"Department"** or **"MDAD"** shall mean the Miami-Dade Aviation Department.

The term **"Director"** shall mean the Director of the Miami-Dade Aviation Department or the Director's designee.

The term **"Extension"** shall mean one (1) two (2) year term.

The term **"Federal Inspection Services Areas (FIS)"** shall mean federally controlled areas in which U.S. Treasury, U.S. Justice and U.S. Agriculture Departments process arriving international passengers.

The term **"Gross Revenues"**, as used in this Agreement, shall mean all monies paid or payable to and consideration of determinable value received by the Concessionaire in operation under the Agreement, regardless of when or where the order therefore is received, or the goods delivered, or services rendered, whether paid or unpaid, whether on a cash, credit or rebate basis or in consideration of any other thing of value; provided, however, that the term **"Gross Revenues"** shall not include: (i) any County Payment made to Concessionaire for free carts in FIS Area, as stated in Article 3.09 **"County Payment to Concessionaire for FIS Area Free Carts"**, (ii) any refund given to the customer because of a customer satisfaction issue which must be documented and auditable, or (iii) promotional discount and coupon offers issued to customers as a result of a Departmental approved marketing plan, or (iv) any sums collected for any federal, state, County and municipal taxes imposed by law upon the sale of merchandise or services.

The term **"International Enplanement"** shall mean an airline passenger(s) who departs MIA to an international destination.

The term **"Lease Effective Date"** shall mean the tenth (10th) business day after the Date of Execution by the County Manager and attestation by the Clerk of the Board of the Lease and Concession Agreement.

The term **"Location(s)"** shall mean the areas which are used by the Concessionaire for actual placement of Cart Management Units.

The term **"Minimum Annual Guarantee" or "MAG"** shall mean as described in Sub-Article 3.01 of this Agreement.

The term **"Minimum Monthly Guarantee"** shall mean as described in Sub-Article 3.01 of this Agreement.

The term **"Nonexclusivity"** shall mean as described in Sub-Article 1.05 of this Agreement.

The term **"North Terminal"** shall mean the area of the terminal building and concourses, within the north part of the terminal area, landside or airside now known as Concourses A-D.

The term **"Proposal"** shall mean a Proposer's written response to RFP MDAD-08-05.

The term "**South Terminal**" shall mean the area of the terminal building and concourses, within the south part of the terminal area, landside or airside which is now known as Concourse H, and a new J Concourse and connecting concession and public locations.

The term "**State**" shall mean the State of Florida.

The term "**Sub-tenant**" shall mean any person, firm, entity or organization, entering into an agreement with Concessionaire to provide luggage cart services to the public at the Airport at a Location.

The term "**TSA**" shall mean the United States Transportation Security Administration, and any successor agency, office or department thereto.

The words "**Work**", "**Services**", "**Program**", "**Project**" or "**Engagement**" shall mean all matters and things that shall be done by the Concessionaire in accordance with the Scope of Services and the terms and conditions of this Agreement.

**NON-EXCLUSIVE  
CONCESSION AGREEMENT  
FOR A LUGGAGE CART CONCESSIONS PROGRAM  
AT  
MIAMI INTERNATIONAL AIRPORT**

THIS CONCESSION AGREEMENT is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between Miami-Dade County, Florida, a political subdivision of the State of Florida and Smarte Carte, Inc. ("Concessionaire"), a Minnesota Corporation authorized to transact business in the State of Florida.

**RECITALS:**

**WHEREAS**, the County is the owner of and operates Miami International Airport through the County's Miami-Dade Aviation Department; and

**WHEREAS**, the Department desires to provide a luggage cart concessions program; and

**WHEREAS**, the luggage cart concessions program will provide a needed service for airline passengers and Airport patrons, and project a positive image of the Airport, Department, and the County to visitors, as further described herein; and

**WHEREAS**, Request for Proposal, RFP No. MDAD-08-05 was issued by the County and in response to the Request for Proposal, the County received proposals and an award has been made to the Concessionaire,

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the parties agree as follows:

**ARTICLE 1 – TERM, EXTENSION AND LOCATIONS**

- 1.01 TERM:** The County hereby grants the Concessionaire, the non-exclusive privilege and obligation to furnish, install, manage, operate, and maintain a first class passenger self-service luggage cart system in and around the terminal and concourse areas at Miami International Airport. This Agreement shall terminate five (5) years after the Date of Execution unless extended as provided herein.
- 1.02 EXTENSION:** The County reserves the right to extend this Agreement for one (1) two (2) year term, upon the terms and conditions contained herein. Such right may be exercised by the Department, in its sole determination on behalf of the County.

In the event the Department elects to extend this Agreement, the Concessionaire shall be notified, in writing, at least 50 Days prior to the then scheduled termination date of this Agreement. In the event the Department does not give such notice, this Agreement shall terminate accordingly.

- 1.03 LOCATIONS:** The County hereby makes available to the Concessionaire locations for the placement of Cart Management Units (CMUs) as depicted in **Exhibit A, "CMU Locations"**.
- 1.04 ADMINISTRATIVE OFFICE AND SUPPORT SPACE:** The Concessionaire shall pay the current rates, which are subject to change. The locations are depicted in Exhibit A-1 "Administrative and Support Space".
- 1.05 NONEXCLUSIVITY:** This Agreement is nonexclusive in character and in no way prevents the Department from entering into an agreement with any other parties for the sale or offering of competitive services, products or items by other concessionaires and/or others in other locations at the Airport during the Term or any Extension thereto of this Agreement.
- 1.06 ADDITION, DELETION AND RELOCATION OF LOCATIONS:** The Department may add, delete, relocate or provide alternate Locations by providing to the Concessionaire an administratively revised Exhibit A. The Department reserves the right, without limitation, at all times during the Term of this Agreement and any Extension thereof, following thirty days advance written notice to the Concessionaire, to require the addition, removal, or change of Location including number of the luggage carts installed or to be installed by the Concessionaire. In the event the Department requires a change of Location, the Concessionaire shall return the original Location to its original condition as it was at the Lease Effective Date. If an alternate location is requested by the Department, the Department will bear the cost of providing electrical and telephone hookup at the alternate location. If an alternate location is requested by the Concessionaire, the Concessionaire will bear the cost of providing electrical and telephone hookup at the alternate location.
- The Concessionaire shall not add, remove or change the Location without the prior written approval of the Department.
- 1.07 CAPITAL IMPROVEMENT PROGRAM:** The Capital Improvement Program (CIP) is currently underway and will involve the refurbishment of terminal interiors, airline relocations, changes in access to the terminal and concourses, construction of new concession Locations, and other improvements that may affect concession operations in the terminal building and on the concourses and access at the curbside or on the airfield. The CIP may affect the operation of the Locations, and **THE DEPARTMENT NEITHER MAKES NOR IMPLIES ANY WARRANTIES AS TO THE EFFECT OF SUCH CAPITAL IMPROVEMENT PROGRAM ON SAID OPERATIONS DURING THE TERM AND ANY EXTENSION OF THIS AGREEMENT.** The Department shall use reasonable good faith efforts to the extent possible, so as to mitigate any adverse impact on the business operations of Locations that will not be demolished by the CIP.
- 1.08 REQUEST FOR PROPOSAL INCORPORATED:** The Concessionaire acknowledges that it has submitted to the County a Proposal, in response to a Request for Proposal (RFP), that was the basis for the award of this Agreement and upon which the County relied. The RFP and the Proposal are incorporated into this Agreement. **IN THE EVENT THERE ARE ANY CONFLICTS BETWEEN THIS CONCESSION AGREEMENT AND THE RFP OR THE PROPOSAL, THE TERMS OF SAID AGREEMENT SHALL GOVERN, FOLLOWED BY THE RFP AND THEN THE PROPOSAL.**

## ARTICLE 2 – USE OF LOCATIONS

- 2.01 USE OF LOCATIONS:** The Concessionaire shall use the Locations as stated in **Exhibit A – “CMU Locations”** for the installation and operation of the CMUs. The Concessionaire shall not use or permit the use of the Locations for any purpose other than as set forth in this Agreement.

The Concessionaire shall provide and maintain luggage carts for International Deplaning passengers processed through the Federal Inspection Services (“FIS”) areas currently located at Terminal B and E of the Terminal Building, and any other area that may be designated as an FIS area, at no cost to the international passengers.

The Concessionaire agrees during the term of this Agreement, at its own costs to maintain, use and operate the Locations and all improvements including a clean, sanitary condition and to be in compliance with any and all present and future laws, ordinances and regulations relating to public health, safety or welfare.

- 2.02 SCOPE OF SERVICES:** The Concessionaire is responsible for the furnishing, installing, operating, managing, and maintaining a first-class luggage cart concession program in all pre-security (landside) and post-security (airside) areas of the Airport. Luggage cart services shall be available for the traveling public twenty-four (24) hours a day, seven (7) days a week.

Concessionaire shall provide all necessary carts and cart management units (CMUs). The Concessionaire shall provide a minimum of 3,200 carts in the baggage claim portion of the FIS free of charge to arriving passengers. This minimum number of carts will be adjusted annually or more frequently in direct proportion to changes in the Federal Inspection Services areas (FIS) for arriving passengers. The Concessionaire shall provide approximately 1,000 carts in the landside (pre-security) areas of the Terminals including ticketing and bag claim areas inside the Terminals, as well as exterior curbsides on the departures and arrivals level. Concessionaire shall ensure carts are returned to the cart management units (CMUs) in a safe and orderly fashion without interfering with the traveling public.

### **Locations:**

The Concessionaire will be responsible for reviewing the physical layout and operating conditions at Miami International Airport. Final approval will be given by the Department on the placement of the CMU locations, throughout the existing terminal areas, curbside, and parking areas.

The Concessionaire is responsible for installing new carts. The Concessionaire is responsible for providing CMUs. Transition schedule will be provided by the Concessionaire and reviewed and agreed to by MDAD.

Advertisement on carts will be allowed, but the Department reserves the right to review and approve any display and/or ad placed on the cart. The Department shall have the

exclusive right to place advertising on the luggage carts through its advertising concessionaire.

**Rental Fee:**

The cart rental fee under this RFP will be three dollars (\$3.00). There will be no charge for carts in the FIS areas.

**Cart Specifications:**

All luggage carts must be new and constructed of durable corrosion resistant materials of no less than 1 inch (2.54cm) and shall have a non-tarnishing and scratch resistant stainless steel finish. The cart should be constructed to be nearly maintenance free, resistant to rough usage and vandalism. The Concessionaire shall submit to the Department for final approval of the finish materials prior to fabrication and installation.

1. Cart Capabilities – A luggage cart shall:
  - a. Hold several pieces of luggage, garment bags, and other items normally utilized by travelers at an airport.
  - b. Provide a space (e.g. a small vinyl coated wire basket) to hold small valuable items such as a purse.
  - c. Roll easily on small curbs, ramps and irregular surfaces and not tip over despite a full load of heavy luggage; and be able to carry full loads of luggage through the public parking garages, curb-fronts, elevators and Terminal Building.
  - d. Be designed to operate safely. Carts will not be allowed on escalators or through security screening points and shall not have a seat designed to carry children.
  - e. Be designed to minimize damage to Airport facilities (i.e. building wall finishes) and overall design and appearance must be attractive.
2. Cart Management Unit (CMU) shall be:
  - a. A free standing operation in the environmental conditions outside the Terminal Building, parking garages and parking lots at the Airport.
  - b. Easy to operate for renting and returning of carts.
  - c. Capable to record monetary usage and have audit trail capability for usage and revenue verification.
  - d. Capable of accepting U.S. coins and currency and a minimum of three major credit cards (if electric power is available).
  - e. Capable of being moved for floor cleaning purposes. The Concessionaire shall be responsible to coordinate the cleaning with the Department's janitorial operator.
  - f. Capable of stacking a large number of carts in a neat, compact arrangement.
  - g. Capable to operate under battery power for at least one week.

The Department reserves the right to add, delete or relocate any CMU deemed necessary. When utilities are not available at the Locations, the Concessionaire will be responsible for bringing in the utilities. Utilities consumed will be additional costs to the Concessionaire.

3. The signage on the CMUs is integral and shall include the following information: luggage carts may not go through security, the cost of the luggage cart and how to pay for rental, the international luggage cart symbol, what to do in case of malfunction, and identification of the Concessionaire's corporate name and logo. CMUs signage should be small in relationship to the size of the overall CMUs and mounted on the CMUs. All signage shall have a grey background color.
4. The following languages: English, Spanish and Creole shall appear on the concession signage at the Airport.
5. The CMUs shall be designed to operate safely and minimize damage to Airport facilities (i.e. building wall finishes).

### **MANAGEMENT REQUIREMENTS**

The Concessionaire shall:

1. Manage the Luggage Cart Concession in a way that maximizes the highest and best use and financial return to the Department.
2. Monitor and enforce compliance with the terms and conditions of the Concession Agreement including but not limited use clauses, customer service, insurance, pricing, hours of operation, detailed reporting of number of transactions and sales, payment of fees, rent, and signage.
3. Maintain permanent records for each CMU.
4. Maintain computerized records on a commercially available property management software program acceptable to the Department. Programs and all data collected should be available to the Department on-line (digital and electronic).

### **OPERATIONAL REQUIREMENTS**

The Concessionaire shall:

1. Provide quality controls audits and reports, including maintenance, contract requirements, cleanliness of CMU and carts.
2. Generate monthly reports to the Department, including number of transactions and sales by CMU.
3. Generate and provide the Department monthly airport revenue reports, and such other financial and management reports as are usual and customary in sophisticated airport concession management programs.
4. Provide on-site staff to perform daily functions as required under this section "Scope of Services" and the Standards of Operations identified in this Concession Agreement, subject to acceptance by the Department.
5. Ensure compliance with Department and other governmental agency ID badging requirements.
6. Implement any new policies, procedures, and operational directives as issued from time to time by the Department.

7. Respond to customer/passenger complaints on a timely basis. Ensure customer service program compliance.
8. Participate in an airport-wide customer service program implemented by the Department.

### **MAINTENANCE**

The Concessionaire shall:

1. Maintain carts and the CMUs Locations pursuant to Department standards, which may be promulgated from time to time.
2. Take corrective action as necessitated to maintain the Locations in acceptable condition as required by the Department.

**The following spaces for lease at MIA are:**

- 1) 331 Sq Ft of Class II space; and,
- 2) 434 Sq Ft of Class IV

**The Annual Terminal Rental Rates for Class II space is \$92.85 per sq ft. and \$30.95 per sq. ft. for Class IV space (October 1, 2006 through September 30, 2007; these rates are subject to change.**

**This space will be made available to the Selected Proposer.**

- 2.03 PROHIBITED ACTIVITIES:** Without limiting any other provision herein, the Concessionaire shall not, without the prior written consent of the Department which may be withheld in its sole and absolute discretion: (a) advertise or hold any distress, fire, or bankruptcy sales, (b) cause or permit anything to be done, in or about the Locations, or bring or keep anything thereon which might (i) increase in any way the rate of fire insurance on the MIA Terminal Building or any of its contents, (ii) create a nuisance or annoyance or safety hazard, or (iii) obstruct or interfere with the rights of others in the MIA Terminal Building; (c) commit or suffer to be committed any waste upon the Locations; (d) use, or allow the Locations to be used, for any improper or unlawful purpose; (e) do or permit to be done anything in any way tending to injure the reputation of the Department, the County, the Board of County Commissioners, or the appearance of the Airport; or (f) construct any improvement on or attach any equipment to the roof of the Airport. Except as required to permit Concessionaire to perform its maintenance and repair obligations under this Agreement, Concessionaire shall not gain access to the roof of the MIA terminal building without the consent of the Department, which may be withheld in the Department's sole and absolute discretion.

### **ARTICLE 3 – RENTALS, PAYMENTS AND REPORTS**

- 3.01 MINIMUM ANNUAL GUARANTEE:** As part of the consideration for the privileges granted to the Concessionaire herein to engage in business at the Airport, the concessionaire shall pay to the County a Minimum Annual Guarantee of \$225,000.00

starting on the Lease Effective Date. This Minimum Annual Guarantee is to be prorated and payable in twelve equal monthly payments in U.S. funds, on the first day of each month in advance and without billing or demand. All monthly payments hereunder shall be referred to herein as the Minimum Monthly Guarantee for the term of this Agreement and any extensions thereof.

**3.02 NO NEGOTIATIONS:** The Concessionaire understands and agrees, as a condition precedent to the County's consideration of the Proposal, that the terms and conditions of **Sub-Article 3.01 "Minimum Annual Guarantee"**, and **Sub-Article 3.04 "Percentage Fee to the Department"** and **Sub-Article 3.09 "County Payment to Concessionaire for FIS Area Free Carts"** are not subject to negotiation or adjustment for any reason, including, but not necessarily limited to, airport construction, airline relocation, airline bankruptcies, change in airline service, and the like, except in the event of an act of God or an event of force majeure as such term is defined in **Sub-Article 22.11 "Force Majeure"**. Nor shall the County be liable for any reduction in sales or disruptions or delays caused in whole or in part by any of the foregoing at any time during the Term and any Extension of this Agreement.

**3.03 RECALCULATION OF THE MINIMUM ANNUAL GUARANTEE:** The Minimum Annual Guarantee shall be recalculated as of the first day of the month immediately following the anniversary of the Lease Effective Date and every year thereafter, except that the MAG can never be less than \$225,000. An appropriate adjustment will be made to reflect the change in the Consumer Price Index ("CPI") for all urban consumers ("CPI-U") in the U.S. Cities Average: All Items, for the published, preceding twelve-month period.

**3.04 PERCENTAGE FEE TO THE DEPARTMENT:** The Concessionaire shall pay the Department a total percentage fee of 32% of Gross Revenues or the Minimum Monthly Guarantee; whichever is greater. The monthly percentage fee shall be due on the fifteenth (15<sup>th</sup>) Day of the month following the month during which the monthly Gross Revenues were received or accrued.

Monthly Percentage Fee payments to the Department payable on any unreported Gross Revenues, determined by the annual audit required pursuant to **Sub-Article 3.20 "Right to Audit/Inspect"**, are considered as having been due on the fifteenth (15<sup>th</sup>) Day of the month following the month during which the unreported Gross Revenues were received or accrued.

**3.05 NOT USED.**

**3.06 ANNUAL RENTAL:** The Concessionaire shall pay rent at the prevailing terminal class rates for the lease of any Administrative Officer and Support spaces provided by **Sub-Article 1.04**, prorated and payable in equal monthly installments in U.S. funds, on the first day of each and every month, in advance and without billing or demand, at the offices of the Department as set forth in **Article 3.17, Address for Payments**.

**3.07 NOT USED.**

**3.08 ADMINISTRATIVE AND SUPPORT SPACE RATE ADJUSTMENT:** On October 1st of each year of the Agreement, the rental rates, pursuant to **Article 1.04, "Administrative Office and Support Space"** shall be subject to recalculation and adjustment in accordance with the policies and formulae approved by the Board of County Commissioners, as may be amended from time to time. When such adjusted rental rates are established, this Agreement shall be considered and deemed to have been administratively amended to incorporate such adjusted rental rates, effective as of such October 1st date. Payments for any retroactive rental adjustments shall be due upon billing by the Department and payable within ten Days of same.

**3.09 COUNTY PAYMENT TO CONCESSIONAIRE FOR FIS AREA FREE CARTS:** The Concessionaire shall provide luggage carts free of charge to arriving international passengers in the FIS area at Miami International Airport, terminal B, E and any other FIS area that becomes operational during the term of this Agreement, including any Extension. The County shall pay to the Concessionaire on a monthly basis, seventy cents (\$.70) per use of any carts used in the FIS areas.

The Concessionaire shall provide a mechanical or electronic system which will accurately count and record the number of carts placed for use in the FIS areas. The Concessionaire shall submit monthly to the Department a statement verified by Department staff. The statement shall show a summary of the number of free carts placed for use in each location, the location and the number of days covered by the statement according to the approved counting devices next to the serial number of the counting device used by international passengers arriving in the FIS area.

The Concessionaire shall submit **Exhibit M, "Monthly Report of Free Luggage Carts in the FIS Areas"** and a monthly invoice with the following supporting statement to the Department for the amount owed to the concessionaire for use of the free carts in the FIS areas. The number of carts shall be determined at each FIS location by non re-settable, dual counting meters through which each cart shall pass on its way into the FIS area. The numbers will be checked each month by the Concessionaire and Department, jointly.

Upon verifying the accuracy of the count submitted in the statement, the Department shall pay to the Concessionaire the amount due.

**3.10 FIS PAID SYSTEM:** In the instance that the County introduces a rental fee cart system in the FIS area, the County will cease the payment of seventy cents (\$.70) per use of any carts so used in the FIS areas.

**3.11 PERFORMANCE BOND FOR MAG REQUIREMENTS:** Within thirty (30) Days from the Date of Execution of the Agreement, the Concessionaire shall provide the Department a Performance Bond to guarantee payment of MAG and annual rent, if any, of Administrative office or support space. Concessionaire shall keep such Performance Bond in full force and effect during the Term and any Extension of this Agreement, as applicable, and, thereafter, until all financial obligations, reports or other requirements of this Agreement are satisfied. The Performance Bond shall be a surety bond. In the

alternative, an irrevocable letter of credit, or other form of security acceptable to the Department may be furnished. Any such form of security instrument shall be endorsed as to be readily negotiable by the Department for the payments required hereunder. The Performance Bond shall be effective for the current year of operation with automatic renewal for each of the remaining years under this Agreement, including any extensions naming the County as obligee and issued by a surety company or companies in such form as approved by the County Attorney. The amount of the Performance Bond shall initially be in the amount equal to seventy-five percent (75%) of the MAG provided for in **Sub-Article 3.01**, and any annual rent due for Administrative Office and Support Space provided for in **Sub-Article 3.06**, which is equal to \$201,874.36. Thereafter, the amount shall be adjusted as necessary to reflect any increases in the MAG.

The Department may draw upon such form of security instrument, if the Concessionaire fails to pay any monies or perform any obligations required hereunder following applicable notice and cure periods specified herein. Upon notice of any such draw, Concessionaire shall immediately replace the Performance Bond with a new Performance Bond in the full amount of the Performance Bond required hereunder. A failure to renew the Performance Bond, or increase the amount of the Performance Bond, or other forms of security instrument, if required due to such draw, shall (i) entitle the Department to draw down the full amount of such Performance Bond, and (ii) be a default of this Agreement entitling Department to all available remedies. Provided Concessionaire is not in default and fully complies with all the payment requirements of this Agreement, the payment security instrument will be returned to Concessionaire within one hundred eighty (180) Days after the end of the Term or any Extension of the Term.

- 3.12 TAXES:** The Concessionaire shall be solely responsible for the payment of all applicable taxes, levied upon the fees and other charges payable by the Concessionaire to the Department hereunder, whether or not the same shall have been billed or collected by the Department, together with any and all interest, penalties and charges levied thereon. The Concessionaire hereby agrees to indemnify the County and Department and hold it harmless from and against all claims by any taxing authority that the amounts, if any, collected from the Concessionaire and remitted to the taxing authority by the Department, or the amounts, if any, paid directly by the Concessionaire to such taxing authority, were less than the total amount of taxes due, and for any sums including interests and penalties payable by the Department as a result thereof. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.
- 3.13 REPORT OF GROSS REVENUES:** On or before the fifteenth (15<sup>th</sup>) calendar day following the end of each month throughout the Term and any Extension of this Agreement, the Concessionaire shall furnish to the Department, a Statement of Monthly Gross Revenues, using Exhibit I "Monthly Report of Gross Revenues". The report shall account for each Location under this Agreement, and provide information on the percentage fee due to the Department pursuant to **Sub-Article 3.04 "Percentage Fee to the Department"**. The Concessionaire shall certify as to the accuracy of such Gross Revenues in such form as shall be prescribed by the Department. The Department may modify from time to time, the form of reporting upon not less than thirty (30) Days written notice to the Concessionaire. The statement must be signed by an officer (if the

Concessionaire is a corporation), partner (if a partnership), or owner (if a sole proprietorship) of the Concessionaire, and identify all Gross Revenues by Location reported to the Concessionaire during such month. Failure to comply within ten (10) Days following the due date of the report shall result in a late fee penalty of fifty dollars (\$50.00) per Day, as provided in **Sub-Article 3.24 "Penalties"**.

A monthly accounting of gross revenues shall be presented on an electronic database format acceptable to the Department indicating:

- 1) A summary of monthly gross revenues by CMU listed by terminal, terminal parking garage, other parking lots, etc.
- 2) A summary of year to date gross revenues by CMU listed by terminal, terminal parking garage, other parking lots, etc.
- 3) CMU and serial numbers by Location.
- 4) A breakdown of the Gross Revenues for any services sub-contracted to a Disadvantaged Business Enterprise, for each such subcontractor, stated and included in the report total.

**3.14 OTHER REPORTS:** The Concessionaire shall provide the Department with monthly reports reflecting financial data and operating statistics of its operation in a format and frequency specified by the Department.

**3.15 LATE PAYMENT:** In the event the Concessionaire fails to make any payments as required to be paid under the provisions of this Agreement within ten (10) business days of the due date, delinquency charges established by the Board will be imposed. Such rate is currently 1½% delinquency charge per month.

**3.16 DISHONORED CHECK OR DRAFT:** In the event the Concessionaire delivers a dishonored check or draft to the Department in payment of any obligation arising under this Agreement, the Concessionaire shall incur and pay a service fee of TWENTY-FIVE DOLLARS (\$25.00), if the face value of the dishonored check or draft is fifty dollars (\$50.00) or less, THIRTY DOLLARS (\$30.00) if the face value of the dishonored check or draft is more than fifty dollars (\$50.00) and less than three hundred dollars (\$300.00), or FORTY DOLLARS (\$40.00), if the face value of the dishonored check is three hundred dollars (\$300.00) or more, or five percent (5%) of the face value of such dishonored check or draft, whichever is greater, plus penalties imposed by law. Further, in such event, the Department may require that future payments required pursuant to this Agreement be made by cashier's checks or other means acceptable to the Department.

**3.17 ADDRESS FOR PAYMENTS:** The Concessionaire shall pay all monies payable and identify the Concession Agreement for which payment is made, as required by this Agreement, to the following:

**In Person:** Miami-Dade Aviation Department  
Finance Division  
4200 N.W. 36<sup>th</sup> Street  
Building 5A, Suite 300

During normal business hours, 8:00 A.M. to 5:00 P.M., Monday through Friday

**By Mail:** Miami-Dade Aviation Department  
Finance Division  
P.O. Box 526624  
Miami, FL 33152-6624

**By Express Mail:** Miami-Dade Aviation Department  
Finance Division  
4200 N.W. 36<sup>th</sup> Street  
Building 5A, Suite 300  
Miami, Florida 33122

**By Wire Transfer:** In accordance with Wire Transfer instructions provided by MDAD's Finance Division, 305-876-7383.

**3.18 REVENUE CONTROL PROCEDURES:** Notwithstanding anything to the contrary contained herein, the Concessionaire shall comply with such revenue control procedures as may be established from time to time by the Department. The Department shall provide the Concessionaire with at least thirty (30) Days prior written notice together with a copy of such revenue control procedures prior to requiring the Concessionaire to implement any such revenue control procedures.

**3.19 ANNUAL AUDIT:** Within ninety (90) Days of each anniversary of the Lease Effective Date of this Agreement and within ninety (90) Days following expiration or earlier termination of this Agreement, the Concessionaire shall, at its sole cost and expense, provide to the Department on an annual basis, an audited report of monthly Gross Revenues and percentage fees separately stating its and each Sub-tenants Gross Revenues, containing an opinion, prepared and attested to by an independent certified public accounting firm, licensed in the State of Florida. The audited report, as detailed in Exhibit G "Independent Auditor Report", shall include a schedule of monthly Gross Revenues and percentage fees paid to the Department under this Agreement, prepared in accordance with Generally Accepted Auditing Standards. The report shall also be accompanied by a management letter containing the findings discovered during the course of the examination, recommendations to improve accounting procedures, revenue and internal controls, as well as significant matters under this Agreement. In addition, the audit shall also include as a separate report, a comprehensive compliance review of procedures to determine whether the books of accounts, records and reports were kept in accordance with the terms of this Agreement for the period of examination. Each audit and examination shall cover the period of this Agreement. The last such report shall include the last day of operation. There shall be no changes in the scope of the reports and letters required hereunder without the specific prior written approval of the Department.

**3.20 RIGHT TO AUDIT/INSPECT:** The Department and the auditors of the County shall have the right, without limitation, at any time during normal working hours, to enter into any locations on or off the Airport, which the Concessionaire may use as administrative,

maintenance and operational locations, in connection with its operations pursuant to this Agreement, to: (1) verify, check and record data used in connection with operation of this Agreement; (2) inspect, review, verify and check all or any portion(s) of the procedures of the Concessionaire for recording or compiling Gross Revenues information and (3) audit, check, inspect and review all books of account, records, financial reports, financial statements, operating statements, inventory records, and state sales tax returns, and work papers relating to operation of this Agreement, and other pertinent information as may be determined to be needed or desirable by the Department. Prior to entering any Locations located on the Airport, the Department shall give advance notice to the Concessionaire.

If it is established that the percentage fees have been underpaid to the Department, the Concessionaire shall forthwith, pay the difference with interest thereon at the rate set forth in **Sub-Article 3.15 "Late Payment"** from the date such amount or amounts should have been paid.

Further, if such examination establishes that Concessionaire has underpaid percentage fees for any period examined by three percent (3%) or more, then the entire expense of such examination shall be borne by Concessionaire.

In the event of any conflict between any provisions of this Agreement and generally accepted accounting principles or generally accepted auditing standards, the provisions of this Agreement shall control even where this Agreement references such principles or standards. In particular, without limitation, the Concessionaire shall maintain all records required under this Agreement to the full extent required hereunder, even if some or all of such records would not be required under such general principals or standards.

In addition to the foregoing, the Department reserves the right to review any and all fees imposed by the Concessionaire to each Sub-tenant and the basis of such fee and allocation to each Sub-tenant.

- 3.21 RECORDS AND REPORTS:** The Concessionaire shall, at all times during the Term of this Agreement, or any Extension hereof, and in accordance with applicable law, maintain at the Concessionaire's principal corporate office located in the United States and make available to the Department in Miami-Dade County, Florida, complete and accurate books and records of all receipts and disbursements from its operations, in a form consistent with good accounting practice. In addition, the Concessionaire shall have in place such devices and forms as are reasonably necessary to record properly, accurately and completely all sales and transactions for each CMU. The form of all such books of account records and reports shall be subject to the approval of the Department and/or the auditors of the County (one or more of the following: the designated external auditing firm or other certified public accounting firm selected by the Department, or the Audit and Management Services Department of the County) prior to commencement of operations hereunder.

The Concessionaire shall account for all revenues related to transactions in connection with this Agreement in a manner which supports the amounts reported to the Department

in the Concessionaire's monthly schedules. At a minimum, the Concessionaire's accounting for such receipts shall include the following:

1. Concessionaire's bank account statements;
2. A compiled report of transactions by Location showing all Gross Revenues and all exclusions from Gross Revenues by category, which report shall be subtotaled by day and totaled by month. The monthly total shall correspond with the amounts reported to the Department on the Concessionaire's monthly "Revenue Reports"; and
3. Such other records, if any, which would normally be examined by an independent certified public accountant in performing an examination of the Concessionaire's Gross Revenues in accordance with generally accepted auditing standards and the provisions of this Agreement.

Such records may be in the form of (a) electronic media compatible with the computers available to the Department, or (b) a computer run hard copy. The Department may require other records necessary in its determination to enable the accurate audit of Concessionaire's Gross Revenues hereunder. Upon ten (10) business days written notice from the Department, all such books and records, shall be made available, either at the Locations, or at the Department's option, at the offices of the Department, for inspection by Department through its duly authorized representatives at any time for up to three (3) years subsequent to final termination of the period to be examined.

**3.22 ADDITIONAL FEES DUE:** If the Department has paid any sum or has incurred any obligation or expense for which the Concessionaire agreed to pay or reimburse the Department, or if the Department is required or elects to pay any sum or incur any obligation or expense because of the failure, neglect or refusal of the Concessionaire to perform or fulfill any of the terms or conditions of this Agreement, then the same shall be deemed due and subject to an additional administrative fee of twenty-five percent (25%) such payment, obligation, or expense.

**3.23 UTILITIES:** The cost of all utilities used or consumed on the Locations shall be borne by the Concessionaire. If the Locations are not provided with separate electric, gas, and/or water meters, the Concessionaire agrees to pay for such utilities in the Locations as a monthly charge, plus any applicable taxes, upon billing by the Department, or utility companies. If billed by the Department, the Department at its sole discretion, will base this monthly charge on (i) a survey of consumption by the Department and current non-discriminatory rates charged others in the Terminal Building or (ii) at the option and expense of the Concessionaire on actual usage measured by temporary meters, arranged and paid for by the Concessionaire. This monthly charge may also be adjusted on a non-discriminatory basis and billed retroactively from time to time based on changes in consumption and rates. Concessionaire hereby agrees to pay the same within thirty (30) Days after it has received Department's invoice thereof. The Concessionaire shall pay for all other utilities used by it including telephones and telephone service hook-up, data lines and additional electrical and communications services required.

**3.24 PENALTIES:** If Concessionaire does not perform under any of the covenants or terms and conditions of this Agreement, the Department may elect to impose the financial

penalties described below, as a result of the violation(s), on a daily basis, in addition to any other penalties permissible by law and/or pursuant to the provisions of this Agreement, until said violations are remedied:

<u>Violation</u>	<u>Fee (Per Occurrence)</u>
Violation of Permitted Use of a Location	\$100 per Day/per Location
Failure to Maintain Required Hours of Operation	\$ 25 per hour/per Location
Failure to Submit Required Documents and Reports	\$ 50 per Day/per Location
Unauthorized Advertising	\$ 50 per Day/per Location
Failure to maintain Location clean	\$ 50 per Day/per Location
Installation of Unapproved Items in Locations	\$ 50 per Day/per Location
Violations of other terms and conditions	\$75 per Day/per Location

The foregoing is due and payable from the Concessionaire. The parties agree that the exact monetary value of said damages caused by the Concessionaire's failure to perform may be difficult and/or impractical to determine; therefore the Concessionaire agrees that the above stated sums represent fair and reasonable estimates of such monetary value of such damages.

- 3.25 PAYMENT SECURITY:** The Concessionaire shall provide the County with an irrevocable standby letter of credit in the format approved by the Department or cash for the payments required by this Sub-Article in an amount equal to twenty-five percent (25%) of the MAG amount provided in Sub-Article 3.01, and any annual rent due for Administrative Office and Support Space provided for in **Sub-Article 3.06**, which is equal to \$67,291.41. Thereafter the amount shall be adjusted as necessary to reflect any increases in the MAG and annual rent. This requirement shall be met no later than thirty (30) Days after the Date of Execution of the Agreement. The payment security shall be kept in full force throughout the Term and any Extension of this Agreement thereof. The Department may draw upon such payment security instrument if the Concessionaire fails to make the payments secured by this Sub-Article. Upon notice of any such draw, Concessionaire shall immediately replace the payment security with a new payment security in the full amount of the payment security required hereunder. A failure to renew the payment security, or increase the amount of the payment security, if required pursuant hereto, shall (i) entitle the Department to draw down the full amount of such payment security, and (ii) be a default of this Agreement entitling Department to all available remedies.

#### **ARTICLE 4 – IMPROVEMENTS TO THE LOCATIONS**

- 4.01 IMPROVEMENTS TO LOCATIONS:** Any and all improvements to Locations will be performed in accordance with the "Tenant Airport Construction – Non Reimbursable Procedures (TAC-N)" Exhibit F.
- 4.02 DESIGN OF IMPROVEMENTS:** Any design and construction specifications and documents must be reviewed and approved in writing by the Department.

**4.03 NOT USED.**

**4.04 NOT USED.**

**4.05 CERTAIN CONSTRUCTION CONTRACT TERMS:** All contracts entered into by the Concessionaire for the construction of the Improvements shall require completion of the improvements within the schedules submitted pursuant to **Sub-Article 4.02 "Design of Improvements"** and shall contain reasonable and lawful provisions for the payment of actual or liquidated damages to the Department in the event the contractor fails to complete the construction on time. The Concessionaire agrees that it will use its best efforts and shall also require the Sub-tenants to take all necessary action available under such construction contracts to enforce the timely completion of the work covered thereby.

Prior to the commencement of any installation work by the Concessionaire, the Concessionaire shall provide or cause to be provided to the Department copies of a fixed price contract or contracts for all work to be performed at the Locations. The work to be performed under such contract(s) shall be insured by a Exhibit B, "Surety Performance and Payment Bond" provided by Concessionaire to the Department in the form contained in Exhibit B "Surety Performance and Payment Bond" in the Concession Agreement. The Surety Performance and Payment bond shall be in full force throughout the term of the installation contract.

**4.06 IMPROVEMENTS FREE AND CLEAR:** The improvements, upon completion, shall immediately become the property of the Department, free and clear of any liens or encumbrances whatsoever, other than the Department's obligation to reimburse the Concessionaire for the un-amortized value of the Approved Improvements as provided in this Agreement. The Concessionaire agrees that any contract for construction, alteration or repairing of the improvements or Locations or for the purchase of material to be used, or for work and labor to be performed, shall be in writing and shall contain provisions to protect the Department from the claims of any laborers, subcontractors or material men against the locations or improvements.

**4.07 OTHER REQUIREMENTS:** The Concessionaire shall apply for and obtain a building permit from the Department for all appropriate inspections and a Certificate of Occupancy upon completion. Within sixty (60) Days following the completion of construction of the improvements, the Concessionaire shall furnish to the Department one complete set each of legible prints (black line), photo mylars and 35 mm aperture card microfilm of construction drawings, and auto cad files revised to "as built", including all pertinent shop and working drawings, copies of all releases of all claims and a copy of the Certificate of Occupancy provided the Concessionaire does not disseminate such information, refer to Transportation Security Regulations (TSR), 49 C.F.R. 1520, et al., Protection of Sensitive Security Information.

No Facility will be allowed to open without obtaining a Temporary Certificate of Occupancy or a Certificate of Occupancy.

**4.08 REVIEW OF CONSTRUCTION:** The Department shall have the right, but not obligation, to periodically observe the construction to ensure conformity with the Final Plans and any changes thereof requested by the Concessionaire and approved by the Department.

**4.09 NOT USED.**

**4.10 NOT USED.**

**4.11 NOT USED.**

**4.12 CONSTRUCTION SERVICES:** The Concessionaire shall provide at a minimum, but not limited to, the following design and construction services:

**1) Concessionaire Improvements**

Pursuant to the terms of this Agreement, the Concessionaire shall construct or cause to be constructed certain improvements. The Department shall provide the Concessionaire with the scope of such improvements and within a reasonable time period to be mutually agreed to by the Concessionaire and the Department, the Concessionaire shall provide the Department with a preliminary estimate of hard and soft costs for such improvements. Once the Department and the Concessionaire have mutually agreed on the scope of the improvements and the preliminary estimates, the Concessionaire shall proceed to design and construct the improvements in accordance with the provisions of this Agreement.

**2) Design and Construction Coordination**

**a. Concessionaire shall:**

1. Be responsible for construction management and coordination of all improvements to the Locations and authorized Administrative and Support space.
2. Coordinate meetings with MDAD's architects, consultants and others, to review procedures, scheduling site surveys and develop build-out schedules.
3. Coordinate the processing and review of improvement submittals. Design and construction shall be in accordance with the MDAD Design Guidelines Manual, Life Safety Master Plan, MDAD Concessions Design Guidelines, Florida Building Code and the TAC-N or TAC-R Procedures, as well as all other applicable codes and regulations.
4. Provide required information such as, but not limited to, leasehold outline or as-built drawings provided by the Department's Technical Support Division.
5. Provide and coordinate access to Location as necessary.
6. Purchase materials and services, and coordinate the fabrication and installation of the Concessionaire development requirement, whereby such elements are the designated responsibility of the Concessionaire, if so implemented.

### 3) Construction

Concessionaire shall:

1. Attend pre-construction meetings, construction meetings, monitor schedule, and coordinate locations development with the Department as required, pursuant to the TAC-N procedures.
2. Adhere to MDAD's TAC-N or TAC-R Design and Construction procedures and requirements.
3. Ascertain that MDAD's TAC-N or TAC-R Design and Construction procedures and requirements, as applicable, are adhered to by all.
4. Monitor and coordinate the construction start, project timetable schedule and completion date for all Locations.
5. Monitor and report to the Department on on-site activities and progress for improvement work. The Architect/Engineer of record is responsible for day-to-day field observation of all construction activities including, but not limited to inspections, delivery, coordination and reporting.
6. Monitor construction progress with regard to the schedule and procedures established and make recommendations to the Department for maintaining and improving construction progress as necessary.
7. Establish a uniform system for the timely processing and control of drawings.
8. Review status of drawings with contractor(s) and architect(s) at progress meetings.
9. Review and advise the Department on all changes to the work with regard to cost and impact on the project pro-forma and construction schedule.
10. Monitor punch list completion and review testing and inspection reports for all Locations.
11. Organize and have available upon request completed project files.
12. Coordinate access to the Location to allow staff training and equipment testing.
13. Submit Record Drawings (as-built drawings) as per the TAC-N or TAC-R requirements within sixty (60) Days from the issuance date of the Certificate of Occupancy, and deliver them to the Department pursuant to the TAC-N or TAC-R procedures.

## ARTICLE 5 – STANDARDS OF OPERATION

**5.01 STANDARDS OF OPERATION:** The Concessionaire shall comply with the Department's "Tenant Handbook", Exhibit K; the "Standards of Operations", Exhibit L, the "MIA Terminal Standards" available on [www.miami-airport.com](http://www.miami-airport.com), and all revisions to same promulgated from time to time by the Department.

The Department shall have the right to adopt and enforce reasonable and non-discriminatory rules and regulations and operating performance standards with respect to the use of Locations, which the Concessionaire agrees to observe and obey. The Department may amend such rules or regulations and operating performance standards

from time to time and shall provide copies thereof to the Concessionaire. The Department shall provide the Concessionaire with reasonable prior written notice, not less than thirty (30) Days, prior to the implementation of any such amendment to the rules or regulations and operating performance standards. Those rules include, but are not limited to, any rules and regulations imposed upon the Department by any governmental agency.

The Concessionaire shall implement and comply with all amended requirements, within fifteen (15) Days of receipt of an amendment to Exhibit L "Standards of Operation". The Concessionaire shall immediately implement and comply with any rules and regulations promulgated for safety or security reasons.

The Concessionaire acknowledges the desire of the Department, as part of its obligation to ensure the highest level of public service, to provide the public and air traveler an adequate range and quality of service. The Department may monitor, test or inspect the Locations at any time through the use of its own personnel, and/or the use of a shopping service, and/or by any other reasonable means that do not unduly interfere with the operation of the business. The results of such service audits may be employed by the Department to enforce the obligations in this Agreement.

The Department shall retain the right, in accordance with the provisions of this Agreement, to make reasonable objections to the quality of articles sold, the character of the service rendered to the public, the prices charged, and the appearance and condition of the Locations, pursuant to Exhibit L "Standards of Operation", as may be amended from time to time.

- 5.02 CART RENTAL RATE:** The Department has established a price of \$3.00 per cart rental. The Concessionaire may request a change to the rental rate from the Department with substantiating documentation to justify the change.

## **ARTICLE 6 – OBLIGATIONS OF THE DEPARTMENT**

### **6.01 DEPARTMENT SERVICES:**

- A. Department's Maintenance Obligation: The Department shall clean, maintain and operate in good condition the terminal building, excluding the Locations. This obligation includes, but is not limited to, all structural (including, but not limited to, the roof and base floor of the terminal building) and all base building work, maintenance of main electrical and mechanical systems, maintenance of walls and ceilings, and repair/maintenance of the roof. The Department shall maintain the public areas in the terminal building furnished and will provide adequate light, cold water and conditioned air. The Department agrees to make all necessary structural repairs to the Locations at its own expense; provided, however, that for purposes of this Agreement such structural repairs shall not include any repairs to any equipment installed by the Concessionaire, and further provided that the Concessionaire shall reimburse the Department, within ten (10) Days of receipt of written demand for such reimbursement, for the cost and expense of all structural repairs required as a result of the negligent or intentional acts of the Concessionaire, its officers, partners,

employees, agents, contractors, subcontractors, licensees, Sub-tenants or invitees. The Concessionaire shall give the Department written notice (or verbal notice in the event of any emergency conditions which may result in harm to the patrons of the Airport, which verbal notice shall be followed by written notice within twenty-four (24) hours) describing any repair, which is the responsibility of the Department. The Department shall commence the repair process promptly after its receipt of such written notice if the Department agrees that such repair is required and is the Department's responsibility hereunder.

- B. The Concessionaire must ascertain the extent of the existing utility capacities, before designing any new loads to be connected to existing systems and piping. The Department agrees to cooperate in providing access to the Locations.

Such maintenance by the Department may be subject to interruption caused by repair, strikes, lockouts, labor controversies, inability to obtain fuel, power or parts, accidents, breakdowns, catastrophes, national or local emergencies, and other conditions beyond the control of the Department.

- C. No Other Obligation of Department: The Concessionaire acknowledges that the Department has made no representations or warranties concerning the suitability of the Locations for the Concessionaire's use or for any other use, and that except as expressly provided in this Agreement, the Department shall have no obligations whatsoever to repair, maintain, renovate or otherwise incur any cost or expense with respect to the Locations or any improvements, furnishings, fixtures, trade fixtures, signage or equipment constructed or used on or in the Locations by the Concessionaire.

1. The Concessionaire hereby confirms that it has made its own investigation of all the costs of doing business under this Agreement, including the costs of furnishings, fixtures, trade fixtures, inventory, signs and equipment needed to operate from the Locations hereunder, that it has done its own projections of the volume of business expected to be generated, that it is relying on its own business judgment concerning its prospects for providing the services required under this Agreement on a profitable basis, and that the Department has not made any representations or warranties with respect to any such matters.
2. The Department does not warrant the accuracy of any statistics or projections relating to the Airport and its operations, which have been provided to the Concessionaire by the Department or anyone on its behalf and the Department shall not be responsible for any inaccuracies in such statistics or their interpretation.
3. All statements contained in this Agreement or otherwise made by the Department or anyone on its behalf concerning any measurement relating to the Locations or any other area of the Airport are approximate only, and any inaccuracy in such statements of measurements shall not give rise to any claim by the Concessionaire under or in connection with this Agreement.

4. The Department shall not be liable to the Concessionaire for any loss of business or damages sustained by the Concessionaire as a result of any change in the operation or configuration of, or any change in any procedure governing the use of, the construction improvements of the terminal building.

## **ARTICLE 7-FURNITURE, FIXTURES AND EQUIPMENT**

- 7.01 FURNITURE, FIXTURES, AND EQUIPMENT:** Any equipment, furnishings, fixtures and signs installed in the Locations by the Concessionaire shall be in keeping with the decor of the terminal building and must be approved in advance by the Department. Any such equipment, furnishings, fixtures and signs so installed by the Concessionaire, as provided in **Sub-Article 4.01 "Improvements to Locations"**, shall, except as provided in **Sub-Article 7.03(B) "Disposal of Furniture, Fixtures, and Equipment"**, be removed from the Locations within five (5) Days following the expiration or earlier termination of this Agreement.
- 7.02 AMERICANS WITH DISABILITIES ACT REQUIREMENTS:** The Concessionaire will be responsible, at its cost, for ensuring that the Locations and all equipment therein, and all functions it performs therein as part of the concession, conform in all respects to the requirements of the Americans with Disabilities Act (the "ADA"), including without limitation, the accessibility guidelines promulgated pursuant thereto. The ADA imposes obligation on both public entities, like the Department and those private entities that offer services for the convenience of users of the public entities' locations. In some circumstances, the public entity must ensure that the operations of the private entity comply with the public entity's ADA obligations. In most cases the ADA obligations of the Department and the Concessionaire will be the same. However, the Department reserves the right to require the Concessionaire to modify its operations or its physical locations to comply with the Department's ADA obligations with respect to the Locations, as the Department in its sole discretion deems reasonably necessary.
- 7.03 DISPOSAL OF FURNITURE, FIXTURES, AND EQUIPMENT:** At least thirty (30) Days prior to the expiration of this Agreement, or upon termination pursuant to **Article 12 "Default and Termination by County"** or **Article 13 "Claims and Termination by Concessionaire"** hereof, the Department shall exercise, at its sole discretion, one (1) of the following options as to any equipment, furnishings, fixtures, signs, or carts installed in the Locations by the Concessionaire or any Sub-tenant:
- (A) Require the Concessionaire to remove such equipment, furnishings, fixtures, signs, or carts from the Locations within five (5) Days following the expiration or earlier termination of this Agreement, subject to the provisions of **Sub-Article 4.01 "Improvements to Locations"**; or
  - (B) Retain any portion of the equipment, furnishings, fixtures, signs, or carts of the Concessionaire (personal property as referred to in **Sub-Article 4.01 "Improvements to Locations"**) in accordance with the provisions of this Agreement; provided however, the Department shall have no right to use or display any proprietary signs or logos (e.g., brand names owned by, or licensed or franchised to Concessionaire).

## ARTICLE 8 – MAINTENANCE

- 8.01 CLEANING:** The Concessionaire shall, at its cost and expense, keep the Locations clean, neat, orderly, sanitary and presentable at all times. If the Locations are not kept clean as provided in the Exhibit L, "Standards of Operation", the Concessionaire will be so advised and shall take immediate corrective action. Failure to take immediate corrective action may result in penalties being assessed pursuant to **Sub-Article 3.24 "Penalties"**.
- 8.02 REMOVAL OF TRASH:** The Concessionaire shall, at its cost and expense, remove or cause to be removed from the Locations and properly disposed of in Department provided containers, all trash and refuse of any nature whatsoever which might accumulate and arise from the operations hereunder. If the Concessionaire enters into agreements for the janitorial and trash removal or any Sub-tenant service within the Locations, such service providers must have permits issued by the Department to do business at the Airport. Trash shall not be stored in any area visible to the public nor cause a private or public hazard through its means of storage. All edible items must be contained so as to minimize exposure to pests. Any trash left or stored in any area visible to the public or edible items not properly contained may result in penalties being assessed pursuant to **Sub-Article 3.24 "Penalties"**.

The Department reserves the right to charge the Concessionaire retroactively non-discriminatory proportionate share for waste disposal which may be imposed either indirectly through rental rates or directly by a Department generated bill for actual usage. Such charges shall not exceed the Department's actual costs.

- 8.03 MAINTENANCE AND REPAIR:** Except with respect to the Department's maintenance and repair obligations as set forth in **Sub-Article 6.01 "Department Services"**, the Concessionaire shall maintain and repair or cause to be maintained and repaired the interiors and exterior storefronts of the Locations. Such maintenance and repairs shall include, but not be limited to, painting, ceiling, walls, floors, laminating doors, windows, equipment, furnishings, fixtures, appurtenances, replacement of ceiling light bulbs, ballast and the replacement of all broken glass, which repairs shall be in quality and class equal to or better than the original work to preserve the same in good order and condition. Maintenance for all equipment furnished by the Concessionaire specifically as a result of their operation shall remain the obligation of the Concessionaire. The Concessionaire shall repair or cause to be repaired, at or before the end of the Term or Extension, if applicable, of this Agreement, all injury done by the installation or removal of furniture and personal property so as to restore the Locations to the state they were at the commencement of this Agreement, reasonable wear and tear excluded. The Department may, at any time during normal business hours, enter upon the public areas of the Locations, or with appropriate notice, enter upon the non-public areas of the Locations, to determine if maintenance is being performed satisfactorily. The Department may enter upon any Location when a Location is not open for business if the Department provides the Concessionaire notice no less than two (2) hours in advance so that a representative of the Concessionaire may be present, except in the case of real or perceived emergencies where no such representatives

shall be required to be present. If it is determined that said maintenance is not satisfactory, the Department shall so notify Concessionaire in writing. If said maintenance is not performed by Concessionaire to the satisfaction of the Department within seven (7) Days after receipt of such written notice, Department shall have the right to enter upon the Locations and perform such maintenance and charge Concessionaire for such services, as provided by **Sub-Article 8.04**

- 8.04 FAILURE TO MAINTAIN:** Upon failure of the Concessionaire to maintain the Locations as provided in this **Article 8 "Maintenance"**, the Department may enter upon the Locations and perform all cleaning, maintenance and repairs which may be necessary and the cost thereof plus twenty-five percent (25%) for administrative costs, shall constitute additional rental, and shall be billed to and paid by the Concessionaire, in addition to any penalties imposed by the Department pursuant to **Sub-Article 3.24 "Penalties"**.

Failure to pay said costs upon billing by the Department will cause this Agreement to be in default as stated in **Sub-Article 12.02 "Payment Default"**.

- 8.05 ENVIRONMENTAL RECYCLING:** The Department is actively engaging in the development of environmental programs. A recycling program is planned at the Airport to include the participation of all Airport Concessionaires. Participation in this program, once established, will be mandatory. The Concessionaire shall agree to bear any reasonable and actual costs associated with the implementation and continued operation of this recycling program, or propose for approval by the Department an alternative environmental recycling plan which such approval shall not be unreasonably withheld.

Proper disposal of contaminated and/or regulated materials generated by the Concessionaire is the sole responsibility of the Concessionaire. Disposal must be through the use of a licensed vendor regulated by the State of Florida and/or any other federal or local regulatory agency.

- 8.06 FIRE PROTECTION AND SAFETY EQUIPMENT:** The Concessionaire and its Sub-tenants must provide and maintain all fire protection and safety equipment and all other equipment of every kind and nature required by any applicable law, rule, ordinance, resolution or regulation, for the Term and any Extension of this Agreement or any insurance carrier providing insurance covering any portion of the Locations.

## **ARTICLE 9 – ASSIGNMENT AND OWNERSHIP**

- 9.01 NO ASSIGNMENT:** The Concessionaire shall not assign, transfer, pledge or otherwise encumber this Agreement nor shall the Concessionaire allow others to use the Locations, without the prior written consent of the Department.
- 9.02 OWNERSHIP OF THE CONCESSIONAIRE:** Since the ownership, control, and experience of the Concessionaire were material considerations to the County in the award of this concession and the entering into of this Agreement, the Concessionaire shall take no actions which shall serve to transfer or, sell majority ownership or control of the Concessionaire without the prior written consent of the Department.

**9.03 CHANGE OF CONTROL:** If Concessionaire is a corporation the issuance or sale, transfer or other disposition of a sufficient number of shares of stock (deemed to mean more than fifty percent (50%) of the stock) in the Concessionaire to result in a change of control of Concessionaire shall be deemed an assignment of this Agreement for purposes of this **Article 9 "Assignment and Ownership"**. If the Concessionaire is a partnership, transfer of any interest in the partnership, which results in a change in control of such Concessionaire, shall be deemed an assignment of this Agreement for purposes of this **Article 9 "Assignment and Ownership"**.

**9.04 HOLDOVER:**

**A. With the Department's Permission:**

If the Concessionaire (or anyone claiming through Concessionaire) shall remain in possession of the Locations after the termination of this Agreement, by written agreement executed by the Department, the person or entity remaining in possession shall be subject to all of the provisions of this Agreement.

**B. Without Department Permission:**

If the Concessionaire (or anyone claiming through Concessionaire) shall remain in possession of the Locations or any part thereof after the termination of this Agreement, without a written agreement executed by the Department, then without limiting the Department's other rights and remedies, the person or entity remaining in possession shall be deemed a tenant at sufferance otherwise subject to all of the provisions of this Agreement. The Concessionaire shall thereafter pay on account of its holdover use and occupancy of the Locations a sum, at a rate equal to two times (2x) the amount payable monthly as MMG PLUS Percentage Fee PLUS monthly installment of any support space annual lease rental pursuant to **Sub-Article 1.04 "Administrative Office and Support Space"**, and with all additional rent also payable as provided in this Agreement (the "Holdover Charges"). Imposition of Holdover Charges, extinguishes any un-amortized investment amounts owed the Concessionaire by the Department, for the slippage in Location turnover. The Holdover Charges shall be payable weekly in advance. Notwithstanding the above, the Concessionaire shall remain liable to the Department for all damages resulting from such breach, with the amount of any Holdover Charges accepted by the Department on account of the holdover considered as mitigation of such damages. The covenant in this Sub-Article shall survive the expiration or the termination of this Agreement.

**ARTICLE 10 – INDEMNIFICATION**

**10.01 INDEMNIFICATION REQUIRED OF CONCESSIONAIRE:** The Concessionaire shall indemnify, defend, and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and cost of defense, which the County or its officers, employees, agents or

instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Concessionaire or its employees, agents, servants, partners, principles or any other persons. The Concessionaire shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon.

The Concessionaire expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Concessionaire shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

## ARTICLE 11 – INSURANCE

**11.01 INSURANCE REQUIRED OF CONCESSIONAIRE:** Within thirty (30) days after the Date of Execution, the Concessionaire shall obtain all insurance required under this Article and submit it to the Department, c/o Risk Management, P.O. Box 025504, Miami, Florida 33152-5504 for approval. All insurance shall be maintained throughout the Term and any Extension of this Agreement.

The limits for each type of insurance may be revised upon review and approval of the Concessionaire's operations. Additional types of insurance coverage or increased limits may be required if, upon review of the operations, the Department determines that such coverage is necessary or desirable.

Certificate(s) of insurance from the Concessionaire and its Sub-tenants must show coverage has been obtained that meets the requirements as outlined below during the construction and operation phase of this Agreement:

- A. Workers' Compensation as required by Chapter 440, Florida Statutes.
- B. Commercial General Liability Insurance on a comprehensive basis including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage combined. This policy shall include Miami-Dade County as an additional insured with respect to this coverage.

The Commercial General Liability Insurance coverage shall include those classifications, as listed in Standard Liability Insurance Manuals, which are applicable to the operations of the Concessionaire in the performances of this Agreement.

- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement in an amount

not less than \$500,000\* per occurrence for Bodily Injury and Property Damage combined.

\*Under no circumstances is the Concessionaire allowed on the Airside Operation Area (AOA) without increasing automobile coverage to \$5,000,000 as approved by the Risk Management Office.

- 11.02 CERTIFICATE OF CONTINUITY:** The Concessionaire shall be responsible for assuring that the insurance certificates required in conjunction with **Article 11 "Insurance"** remain in force for the duration of this Agreement, including the Extension, if applicable. If insurance certificates are scheduled to expire during the Term of the Agreement, the Concessionaire shall be responsible for submitting new or renewed insurance certificates for its operations to the Department's Risk Management Unit at a minimum of thirty (30) Days before such expiration.

Certificates will show that no modification or change in insurance shall be made without thirty (30) Days written advance notice to the certificate holder.

- 11.03 INSURANCE COMPANY RATING REQUIREMENTS:** All insurance policies required above from the Concessionaire shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A" as to management, and no less than "Class VII" as to financial strength, according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the Department's Risk Management Office.

- 11.04 CANCELLATION OF INSURANCE OR BONDS:** Cancellation of any insurance or bonds, or non-payment by the construction contractors of any premiums for any insurance policies or bonds required by this Agreement shall constitute a breach of this Agreement.
- 11.05 RIGHT TO EXAMINE:** The Department reserves the right, upon reasonable notice and at the County's sole cost and expense, to examine the original policies of insurance of the Concessionaire (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The Concessionaire agrees to permit such inspection at the offices of the Concessionaire. In addition, upon request (but no later than five (5) Days from the date of request, unless such longer period is agreed to by the Department) the Concessionaire and/or its Sub-tenant agree to provide copies to the Department, at the Concessionaire's or Sub-tenant's sole cost and expense.
- 11.06 PERSONAL PROPERTY:** Any personal property of the Concessionaire, or of others, placed in the Locations and support/storage spaces shall be at the sole risk of the Concessionaire or the owners thereof, and the County shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage.

**11.07 SURVIVAL OF PROVISIONS:** The provisions of **Article 11 "Insurance"** shall survive the expiration or earlier termination of this Agreement.

## **ARTICLE 12- DEFAULT AND TERMINATION BY COUNTY**

**12.01 EVENTS OF DEFAULT:** A default shall mean a breach of this Agreement by the Concessionaire (an "Event of Default"). In addition to those defaults defined in **Sub-Article 12.02 "Payment Default"**, **Sub-Article 12.03 "Other Defaults"**, and **Sub-Article 12.04 "Habitual Default"**, an Event of Default, may also include one (1) or more of the following occurrences:

- (A) The Concessionaire has violated the terms and conditions of this Agreement;
- (B) The Concessionaire has failed to make prompt payment to subcontractors or suppliers for any service or work provided for the design, installation, operation, or maintenance of the advertising concessions;
- (C) The Concessionaire has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Concessionaire's creditors, or the Concessionaire has taken advantage of any insolvency statute or debtor/creditor law, or the Concessionaire's affairs have been put in the hands of a receiver;
- (D) The occurrence of any act, which operates to deprive the County of the rights, power, licenses, permits or authorities necessary for the proper conduct and operation of the activities authorized herein;
- (E) Abandonment or discontinuance of operations by Concessionaire of its business by any act(s) of Concessionaire;
- (F) Any persistent violation on the part of Concessionaire, its agents or employees of the traffic rules and regulations of the County at Airport or disregard of the safety of persons using the Airport, upon failure by Concessionaire to correct the same;
- (G) Failure on the part of Concessionaire to maintain the quality of service required by the terms of this Agreement, including, but not limited to, any cessation or diminution of service by reason of Concessionaire being unable for any reason to maintain in its employ the personnel necessary to keep its business in operation and available for public use, unless such use is due to strike, lockout, or bona fide labor dispute;
- (H) Failure by Concessionaire to maintain its other equipment in a manner satisfactory to the Department;
- (I) The Concessionaire has failed to obtain the approval of the Department where required by this Agreement;
- (J) The Concessionaire has failed to provide adequate assurances as required under **Sub-Article 12.09 "Adequate Assurances"**;
- (K) The Concessionaire has failed to comply with any provision of **Sub-Article A "Airport Concessions Disadvantaged Business Enterprise Participation Plan"**;

- (L) The Concessionaire has failed in a representation or warranty stated herein; or
- (M) The Concessionaire has received three (3) notices of default, of any kind, within a twenty-four (24) month period.

**12.02 PAYMENT DEFAULT:** Failure of the Concessionaire to make MAG/MMG payments and Percentage Fee payments and other charges required to be paid herein when due and fails to cure the same within five (5) Days after written notice shall constitute a default, and the Department may, at its option, terminate this Agreement after five (5) Days notice in writing to the Concessionaire.

**12.03 OTHER DEFAULTS:** The Director shall have the right, upon thirty (30) Days written notice to the Concessionaire to terminate this Agreement upon the occurrence of any one or more of the following unless the same shall have been corrected within thirty (30) Days after written notice; provided, however, that if it is not reasonably possible to cure such failure within such thirty (30) Day period, such cure period may be extended for an additional period of such duration the Department shall deem appropriate without waiver of any of the Department's rights hereunder, if within the thirty (30) Days after such written notice the Concessionaire commences to cure such default and thereafter diligently and continuously continues to cure such default:

- (A) Failure of the Concessionaire to comply with covenants of this Agreement other than those that constitute default pursuant to **Sub-Article 12.02 "Payment Default"**.
- (B) The conduct of any business, the performance of any service, or the merchandising of any product or service not specifically authorized herein.
- (C) Any Event of Default.

**12.04 HABITUAL DEFAULT:** Notwithstanding the foregoing, in the event that the Concessionaire has frequently, regularly or repetitively defaulted in the performance of or has breached any of the terms, covenants and conditions required herein, to be kept and performed by the Concessionaire, regardless of whether the Concessionaire has cured each individual condition of breach or default as provided for in **Sub-Article 12.02 "Payment Default"** and **Sub-Article 12.03 "Other Defaults"** above, the Concessionaire may be determined by the Director to be an "habitual violator". At the time that such determination is made, the Director shall issue to the Concessionaire a written notice, advising of such determination and citing the circumstances thereof. Such notice shall also advise the Concessionaire that there shall be no further notice or grace periods to correct any subsequent breach(s) or default (s) and that any subsequent breach or default, of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and collectively shall constitute a condition of noncurable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the Director may terminate this Agreement upon the giving of written notice of termination to the Concessionaire, such termination to be effective upon the seventh (7) Day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Concessionaire shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the Concessionaire shall discontinue its operations at the Airport and proceed to remove all its personal property in accordance with **Sub-Article 12.10 "Actions at Termination"** hereof.

**12.05 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE:** If an Event of Default occurs, the Director shall notify the Concessionaire by sending a written notice of default, specifying the basis for such Event of Default, and advising the Concessionaire that such default must be cured immediately or this Agreement with the Department may be terminated. The Concessionaire can cure and rectify the Event of Default, to the Department's satisfaction, within thirty (30) Days from Concessionaire's receipt of the Default Notice (the "Cure Period") or such other timeframe as delineated in the Agreement. The Department may extend the Cure Period and grant an additional period of such duration as the Department shall deem appropriate without waiver of any of the Department's rights hereunder, so long as, the Concessionaire has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) Day period or any other period which the Department prescribes. The notice of default shall specify the Termination Date by when the Concessionaire shall discontinue the services.

**12.06 UNAMORTIZED INVESTMENT EXTINGUISHED:** Termination of this Agreement based upon Sub-Article 12.07 "Termination for Abandonment", Sub-Article 12.02 "Payment Default", Sub-Article 12.03 "Other Defaults", Sub-Article 12.04 "Habitual Default", or Sub-Article 12.08 "Termination for Cause", shall extinguish any unamortized investment amounts owed the Concessionaire by the Department.

**12.07 TERMINATION FOR ABANDONMENT:** This Agreement may be terminated in its entirety upon the abandonment by the Concessionaire of the Locations or the voluntary discontinuance of Concessionaire's services at the Airport for any period of time exceeding twenty-four (24) consecutive hours, unless such abandonment or discontinuance has been caused by civil disturbance, governmental order or Act of God that prevents the Concessionaire from providing services on the Locations for the purposes authorized in Article 2 "Use of Locations". The foregoing shall not include periodic Sub-tenant vacancies in individual Locations that may occur from time to time during the Term of this Agreement including any Extension term.

**12.08 TERMINATION FOR CAUSE:** The County may terminate this Agreement, effective immediately if: (i) the Concessionaire attempts to meet its contractual obligation(s) with the County through fraud, misrepresentation or material misstatement; or (ii) a principal of the Concessionaire is convicted of a felony during the Term or any Extensions thereof if applicable. The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or joint venture or other entity has with the County and that such individual, corporation or joint venture or other entity shall be responsible for all direct and indirect costs associated with such termination, including attorney's fees.

The foregoing notwithstanding, any individual, firm, corporation, joint venture, or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be disbarred from County contracting for up to five (5) years in accordance with the County's debarment procedures. The Concessionaire may be subject to debarment for failure to perform, and all other reasons set forth in § 10-38 of the Code of Miami-Dade County, Florida (the "Code").

**12.09 ADEQUATE ASSURANCES:** When, in the opinion of the Department, reasonable grounds for uncertainty exist with respect to the Concessionaire's ability to perform the work or any portion thereof, the Department may request that the Concessionaire, within the time frame set forth in the Department's request, provide adequate assurances to the Department, in writing, of the Concessionaire's ability to perform in accordance with terms of this Agreement. In the event that the Concessionaire fails to provide to the Department the requested assurances within the prescribed time frame, the Department may:

1. Treat such failure as a repudiation of this Agreement; and
2. Resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the work or any part thereof either by itself or through others.

**12.10 ACTIONS AT TERMINATION:** The Concessionaire shall, upon receipt of such notice to terminate, and as directed by the Department:

- (A) Stop all work as specified in the notice to terminate;
- (B) Take such action as may be necessary for the protection and preservation of the Locations and other Department materials and property; and
- (C) Vacate, quit and surrender, all Locations and storage/support spaces and account for all furnishings, fixtures, equipment, software, vehicles, records, funds, inventories, commodities, supplies and other property of the County, on or before the date of termination.

### **ARTICLE 13 – CLAIMS AND TERMINATION BY CONCESSIONAIRE**

**13.01 ADMINISTRATIVE CLAIM PROCEDURES:** If the Concessionaire has any claim against the County arising under this Agreement, it will be made in writing within thirty (30) Days of the occurrence of the event to the Director. The exact nature of the claim, including sufficient detail to identify the basis for the claim and the amount of the claim shall be clearly stated. The dispute will be decided by the Director, who will mail or otherwise furnish a written copy of the decision to the Concessionaire at the address furnished in **Sub-Article 18.09 "Notices"**. The decision of the Director will be final and conclusive unless, within thirty (30) Days from the date of receipt of such copy, the Concessionaire mails or otherwise furnishes to the Department a written appeal addressed to the County Manager. The decision of the County Manager, or his duly authorized representative for the determination of such appeals, will be final and conclusive unless within thirty (30) Days of the Concessionaire's receipt of such decision, the Concessionaire files an action in a court of competent jurisdiction. In connection with any appeal proceeding under this provision, the Concessionaire shall be afforded an opportunity to be heard and to offer other evidence in support of the appeal. Pending final decision of a dispute hereunder, the Concessionaire shall proceed diligently with the performance of this Agreement and in accordance with the County's decision. Failure to perform in accordance with the decision of the Director or the County Manager shall be cause for termination of this Agreement in accordance with **Sub-Article 12.03 "Other Defaults"**.

The failure of the Concessionaire to comply with this administrative claim procedure shall be cause for a waiver of claim and an abandonment of any claim arising out of the event.

**13.02 TERMINATION:** The Concessionaire shall have the right, upon thirty (30) Days written notice to the County to terminate this Agreement, without liability to the County, at any time after the occurrence of one or more of the following events:

- (A) Issuance by any court of competent jurisdiction of any injunction substantially restricting the use of the Airport for airport purposes, and the injunction remaining in force for a period of more than one hundred eighty (180) Days.
- (B) A breach by the County of any of the material terms, covenants or conditions contained in this Agreement required to be kept by the County and failure of the Department to remedy such breach for a period of one hundred eighty (180) Days after receipt of written notice from the Concessionaire of the existence of such breach.
- (C) The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, of the operation, control or use of the airport locations or any substantial part, or parts thereof, in such a manner as substantially to restrict the Concessionaire's provision of services for a period of one hundred eighty (180) Days.

#### **ARTICLE 14 – AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISES**

**14.01 ACDBE REQUIREMENTS:** It is the policy of the County that ACDBE's shall have the maximum practical opportunity to participate in the performance of County agreements. As used in the Bid Documents, the term "Airport Concession Disadvantaged Business Enterprises (ACDBE)" means a small business concern, which (a) is at least fifty-one percent (51%) owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least fifty-one percent (51%) of the stock which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it as set forth in 49 CFR Part 23, Code of Federal Regulations. The County has established an ACDBE concession specific goal of 20% percent of gross revenues and the Successful Proposer has committed to a 23% of gross revenues. The ACDBE overall goal can be achieved either through the Proposer being an ACDBE itself, a partnership or joint venture, or subcontracting a percentage of gross revenues.

The Airport Concession Disadvantaged Business Enterprise (ACDBE) Plan must be submitted with the Proposal in accordance with Appendix C, Section II and its supporting documents. The Operator will be required to submit to the Department's Minority Affairs Division, Monthly Utilization Reports (MUR) reflecting ACDBE revenue and operational expenses, commencing 90 Days after beneficial occupancy and monthly thereafter, on or before the 10<sup>th</sup> day of every month.

**14.02 COUNTING ACDBE PARTICIPATION TOWARD CONTRACT GOALS:**

1. When an ACDBE participates in a contract, only the value of the work actually performed by the ACDBE toward the ACDBE goal will be counted.

2. When an ACDBE performs as a participant in a joint venture, a portion of the total dollar value of the contract during the complete contract term, equal to the distinct clearly defined portion of the work of the contract that the ACDBE performs will be counted toward ACDBE goals as outlined in Appendix C.
3. Expenditures to an ACDBE contractor toward ACDBE goals will be counted only if the ACDBE is performing a commercially useful function as defined below:

- (a) An ACDBE performs a commercially useful function when it is responsible for execution of specific quantifiable work of the contract and is carrying out its responsibilities by actually performing, or managing, or supervising the specific identified work.

MDAD will determine whether an ACDBE is performing a commercially useful function by evaluating the specific duties outlined in the Joint Venture Agreement; the subcontract agreement or other agreements in accordance with industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and other relevant factors.

- (b) An ACDBE does not perform a commercially useful function if its role is limited to that of an extra participant in a financial or other transaction, contract, or project through which funds are passed in order to obtain the appearance of ACDBE participation.
- (c) If an ACDBE does not perform or exercise responsibility for at least their percentage of its participation or if the ACDBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the ACDBE is not performing a commercially useful function.
- (d) When an ACDBE is presumed not to be performing a commercially useful function as provided in paragraph (c) of this section, the ACDBE may present evidence to rebut this presumption. MDAD will determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

4. MDAD's decision on commercially useful function matters are final.

#### **14.03 ACDBE GOAL ACHIEVED THROUGH JOINT VENTURE ("JV") PARTNERING:**

Proposers may decide to satisfy a part of the ACDBE goal by Joint Venturing with an ACDBE. The ACDBE partner must meet the eligibility standards set forth in 49 CFR Part 23. A "joint venture" or ("JV") shall mean and may be referred to as an "association" of two or more businesses acting as a concessionaire and performing or providing services on a contract, in which each joint venture or association partner combines property, capital, efforts, skill, and/or knowledge. The joint venture agreement must specify the following:

- (1) Each ACDBE joint venture ("JV") partner must be responsible for a clearly defined portion of the work to be performed. The work should be detailed separately from the work performed by the non-ACDBE JV partner.

The work should be submitted as part of this solicitation and annually thereafter to the Aviation Department's Minority Affairs Division. The work to be performed by the ACDBE joint venture partner should be store specific with regards to tasks and locations.

The ACDBE Joint Venture partner will be required to spend the minimum amount of aggregate time on-site, focused on the operation of the concession. Such "minimum amount of aggregate time" is defined as ten hours per week.

- (2) Each Joint Venture partner must submit a notarized Monthly Utilization Report (ACDBE MA-2) and a notarized Monthly Report of ACDBE Joint Venture Activity (ACDBE MA-1) providing details of how the performance objectives were achieved and providing documentation of that achievement on the (ACDBE MA-1) form. This information should include, but not be limited to:
  - a. Details of training sessions, including class rosters and lesson plans.
  - b. Deliverables and work products.
  - c. Time sheets of partner employees used to fulfill objectives. Time sheets must accurately reflect hours worked and compensation earned.
  - d. Proof that employees of partners actually work for them (payroll, payroll tax returns and the like).
- (3) Each ACDBE partner must share in the ownership, control, management, and administrative responsibilities, risks and profits of the JV in direct proportion to its stated level of JV participation.
- (4) Each ACDBE JV partner must perform work that is commensurate with the Lease Agreement.

As described below, each Proposer must submit, as part of its Proposal, a plan for the achievement of the ACDBE goal, including Schedule of Participation and the Letter of Intent from ACDBE's who are Certified or have applied for Certification to the Miami-Dade County Department of Business Development as required by Airport Concession Disadvantaged Business Enterprise Participation Plan (ACDBE).

Without limiting the requirements of the Agreement, the County will have the right to review and approve all agreements utilized for the achievement of these goals. Such agreements must be submitted with the Proposal.

**14.04 CERTIFICATION - AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE):** In order to participate as an ACDBE on this contract, an ACDBE must be certified or have applied for certification to the Miami-Dade County Department of Business Development (DBD) or Florida Uniform Certification Program (FLUCP) at the time of Proposal submittal, but the ACDBE firm must be fully certified on or before the award date.

Application for certification as an ACDBE may be obtained by contacting the Miami-Dade County Department of Business Development (DBD) located at 111 NW 1<sup>st</sup> Street, Stephen P. Clark Center, 19<sup>th</sup> floor, Miami Florida 33128-1974 or by telephone at (305) 375-3111 or

facsimile at (305) 375-3160, or visit their website at [www.co.miami-dade.fl.us/DBD/](http://www.co.miami-dade.fl.us/DBD/)  
<<http://www.co.miami-dade.fl.us/DBD/>>.

The ACDBE Certification List is maintained and published at least every other week by the Department of Business Development (DBD) and contains the names and addresses of currently certified Airport Concession Disadvantaged Business Enterprise (ACDBEs) certified by the agency.

The FLUCP Directory is available at <<http://www.bipincwebapps.com/biznetflorida/>>. The Directory lists the firm's name, address, phone number, date of the most recent certification, certifying agency and type of work the firm has been certified to perform. The FLUCP updates the data every 24 hours and revises the Directory regularly. The address for Florida UCP is:

**Florida Department of Transportation,  
Equal Opportunity Office  
605 Suwannee Street, MS 65  
Tallahassee, Florida 32399-0450  
Tel: (850) 414-4747 Fax: (850) 414-4879**

**14.05 AFFIRMATIVE ACTION AND AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS:** The Operator acknowledges that the provisions of 14 CFR Part 152, Affirmative Action Employment Programs, and 49 CFR Part 23, Disadvantaged Business Enterprise Programs, are applicable to the activities of the Successful Proposer under the terms of the Agreement, unless exempted by said regulations, and hereby agrees to comply with all requirements of the Department, the Federal Aviation Administration and the U.S. Department of Transportation.

These requirements may include, but not be limited to, the compliance with Airport Concession Disadvantaged Business Enterprise and/or Employment Affirmative Action participation goals, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies, the submission of various reports and, if directed by the Department, the contracting of specified percentages of service contracts and purchase of goods from Airport Concession Disadvantaged Business Enterprises. In the event it has been determined, in accordance with applicable regulations, that the Successful Proposer has defaulted in the requirement to comply with the provisions of this section and fails to comply with the sanctions and/or remedies then prescribed, the County shall have the right, upon written notice to the Concessionaire, to terminate this Agreement, pursuant to Default language referenced in the Agreement.

The Operator shall include the following nondiscrimination language in concession and management related contracts with MDAD:

*"This agreement is subject to the requirements of the US Department of Transportation's Regulations 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate*

*against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23."*

*"The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements."*

**14.06 ACDBE MENTORING, ASSISTANCE AND TRAINING PROGRAM:** Consistent with the goal of providing ACDBEs with hands-on participation and the responsibility for a clearly defined portion of the Airport Concession operations, subject to Section 5 "Airport Concession Disadvantaged Business Enterprise" hereof, each ACDBE shall have the duty and responsibility to operate certain areas of the concession(s) following a mentoring period, if needed, which shall include but not be limited to the following specific duties and responsibilities:

**A. Operations**

- (1) Passenger profile analysis
- (2) Product analysis
- (3) Product maintenance
- (4) Cash handling/sales audit
- (5) Warehousing, packaging, and sales reporting of merchandise

**B. Personnel**

- (1) Employment practices
- (2) Compliance with wage and hour laws
- (3) Compliance with County and Airport requirements
- (4) Designing compensation and benefits plans
- (5) Staffing to meet customer levels
- (6) Staffing to meet maintenance levels
- (7) Management and staff training to enhance product knowledge and customer service

**C. Loss Prevention and Security**

- (1) External and internal theft
- (2) Product Security
- (3) Airport Security Awareness

**D. Books, Records and Reports**

- (1) The books of account and supporting records of the joint venture(s) and the sub-concessionaire(s) shall be maintained at the principal office and shall be open for inspection by the MDAD or the ACDBE sub-concessionaire(s) or Joint Venture(s), upon reasonable prior written notice, during business hours.
- (2) The books of account, for both financial and tax reporting purposes shall be maintained on the accrual method of accounting. The Successful Proposer shall provide to the sub-concessionaire(s) or joint venture(s), within an agreed upon time after the end of each month during the term of this agreement, an unaudited operating (*i.e.*, income) statement for the preceding month and for the year-to-date.
- (3) Reports of the ACDBE Mentoring Program shall be submitted to the Department's Minority Affairs and Business Management Divisions, outlining the specific areas of training (*i.e.*, components covered, participating staff, total number of hours of training, training material covered, etc.).

**14.07 AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN:** The Successful Proposer shall contract with those firm(s) as are listed on the Successful Proposer's ACDBE Participation Plan in the Proposal documents and approved by the Department, and shall thereafter neither (i) terminate such ACDBE firm(s), nor (ii) reduce the scope of the work to be performed, nor (iii) decrease the percentage of participation, nor (iv) decrease the dollar amount of participation by the ACDBE firm(s) without the prior written authorization of the Department

The County shall monitor the compliance of the Successful Proposer with the requirements of this provision during the term of this agreement.

The County shall have access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records, records of expenditures, contracts between the Successful Proposer and the ACDBE Participant, and other records pertaining to the ACDBE Participation Plan.

If at any time the County has reason to believe that the Successful Proposer are in violation of this provision, the County may, in addition to pursuing any other available legal remedy, impose sanctions which may include, but are not limited to, the termination or cancellation of the agreement in whole or in part, unless the Successful Proposer demonstrates, within a reasonable time, its compliance with the terms of this provision. No such sanction shall be imposed by the County upon the Successful Proposer except pursuant to a hearing conducted by the MDAD Compliance Monitor and/or Director.

**ARTICLE 15- RULES, REGULATIONS AND PERMITS**

**15.01 RULES AND REGULATIONS:** The Concessionaire shall comply and cause its Sub-tenants to comply, with the Ordinances of the County including Chapter 25, Code of Miami-Dade County, Florida, as the same may be amended from time to time, Operational

Directives issued thereunder by the Department, all additional laws, statutes, ordinances, regulations and rules of the federal, State and County governments, and any and all plans and programs developed in compliance therewith, and any County Administrative Orders and resolutions of the Board of County Commissioners which may be applicable to its operations or activities under this Agreement.

**15.02 VIOLATIONS OF RULES AND REGULATIONS:** The Concessionaire agrees to pay, on behalf of the County, any penalty, assessment or fine issued against the County, or the Department to defend in the name of the County any claim, assessment or civil action, which may be presented or initiated by any agency or officer of the federal, State or County governments based in whole or substantial part upon a claim or allegation that the Concessionaire, its agents, employees, Sub-tenants or invitees, have violated any law, ordinance, regulation or rule described in **Sub-Article 15.01 "Rules and Regulations"** or any plan or program developed in compliance therewith. The Concessionaire further agrees that the substance of **Sub-Article 15.02 "Violations of Rules and Regulations"** and **Sub-Article 15.01 "Rules and Regulations"** shall be included in every Sub-Lease and other agreements which the Concessionaire may enter into related to its activities under this Agreement and that any such Sub-Lease and other agreement shall specifically provide that "Miami-Dade County, Florida is a third party beneficiary of this and related provisions." This provision shall not constitute a waiver of any other conditions of this Agreement prohibiting or limiting assignments, subletting or subleasing.

**15.03 PERMITS AND LICENSES:** The Concessionaire shall obtain, pay for and maintain on a current basis and make available to the Department upon request, all permits and licenses as required for the performance of its services. The Concessionaire shall cause its Sub-tenants to do the same.

## **ARTICLE 16 – GOVERNING LAW**

**16.01 GOVERNING LAW - VENUE:** This Agreement shall be governed and construed in accordance with the laws of the State of Florida. The venue of any action on this Agreement shall be laid in Miami-Dade County, Florida and any action to determine the rights or obligations of the parties hereto shall be brought in the courts of the State of Florida.

**16.02 NOTICE OF COMMENCEMENT OF CIVIL ACTION.** In the event that the County or the Concessionaire commence a civil action in the state or federal courts for Miami-Dade County, where such action is based in whole or in part upon an alleged breach of this Agreement, the County and the Concessionaire agree to waive the procedures for initial service of process mandated by Chapters 48 and 83 of the Florida Statutes, by Rule 1.070 of the Florida Rules of Civil Procedure, and by Rule 4(c) of the Federal Rules of Civil Procedures. In such event, the County and the Concessionaire agree to submit to the jurisdiction of the court in which the action has been filed when initial service has been made either by personal service or by certified mail, returned receipt requested upon the representatives of the parties indicated in **Sub-Article 18.09 "Notices"** of this Agreement, with a copy provided to the County Attorney and the attorney, if any, which the Concessionaire has designated in writing. Notwithstanding the foregoing, and in addition

thereto, the Concessionaire, if a corporation, shall designate a registered agent and a registered office and file such designation with the Florida Department of state in accordance with Chapters 48 and 607 of the Florida Statutes.

## ARTICLE 17 – TRUST AGREEMENT

- 17.01 INCORPORATION OF TRUST AGREEMENT BY REFERENCE:** Notwithstanding any of the terms, provisions and conditions of this Agreement, it is understood and agreed by the parties hereto that the provisions of the Amended and Restated Trust Agreement, dated as of the 15<sup>th</sup> day of December, 2002, as amended from time to time, by and between the County and JP Morgan Chase Bank, as Trustee, and Wachovia Bank, National Association, as Co-Trustee (the "Trust Agreement"), which Trust Agreement is incorporated herein by reference, shall prevail and govern in the event of any inconsistency with or ambiguity relating to the terms and conditions of this Agreement, including the rents, fees or charges required herein, and their modification or adjustment. A copy of the Trust Agreement may be examined by the Concessionaire at the offices of the Department during normal working hours.
- 17.02 ADJUSTMENT OF TERMS AND CONDITIONS:** If at any time during the Term or any Extension thereto, as applicable, a court of competent jurisdiction shall determine that any of the terms and conditions of this Agreement, including the MAG, fees and charges required to be paid hereunder to the Department by the Concessionaire or by other Concessionaires under other agreements of the Department for the lease or use of locations used for similar purposes, are unjustly discriminatory, the County shall have the right to modify such terms and conditions and to increase or otherwise adjust the rentals fees and charges required to be paid under this Agreement in such a manner as the County shall determine is necessary and reasonable so that terms and conditions and the rentals fees and charges payable by the Concessionaire and others shall not thereafter be unjustly discriminatory to any user of like locations and shall not result in any violation of the Trust Agreement or in any deficiency in revenues necessary to comply with the covenants of the Trust Agreement. In the event the County has modified the terms and conditions of this Agreement, including any adjustment of the rentals, fees and charges required to be paid to the County, pursuant to this provision, this Agreement shall be amended to incorporate such modification of the terms and conditions upon the issuance of written notice from the County to the Concessionaire.
- 17.03 INSPECTIONS:** The authorized employees and representatives of the County and of any applicable federal or state agency having jurisdiction hereof shall have the right of access to the Locations and any storage/support spaces at all reasonable times for the purposes of inspection to determine compliance with the provisions of this Agreement or applicable law. The right of inspection shall impose no duty on the County to inspect and shall impart no liability on the County should it not make such inspection(s).
- 17.04 MIAMI-DADE COUNTY INSPECTOR GENERAL REVIEW:** According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all Department contracts, throughout the duration of said

contracts, except as otherwise provided below. The cost of the audit of any contract will be one quarter of one percent (0.25%) of the total contract amount. The audit cost will be deducted by the Department from payments from the Concessionaire. The audit cost shall also be included in all change orders and all contract renewals and extensions.

**Exception:** The above application of one quarter of one percent (0.25%) fee assessment shall not apply to the following contracts: (a) contracts for legal services; (b) contracts for financial advisory services; (c) auditing contracts; (d) facility rentals and lease agreements; (e) concessions and other rental agreements; (f) insurance contracts; (g) revenue-generating contracts; (h) professional service agreements under \$1,000; (i) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order No. 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. *Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter of one percent (0.25%) in any exempted contract at the time of award.*

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all Department contracts including, but not limited to, those contracts specifically exempted above.

## ARTICLE 18 – OTHER PROVISIONS

- 18.01 PAYMENT OF TAXES:** The Concessionaire shall pay all taxes lawfully assessed against its interests in the Locations, any storage/support spaces and its services hereunder, provided however, that the Concessionaire shall not be deemed to be in default of its obligations under this Agreement for failure to pay such taxes pending the outcome of any legal proceedings instituted in courts of competent jurisdiction to determine the validity of such taxes. Failure to pay same after the ultimate adverse conclusion of such contest shall constitute an Event of Default, pursuant to **Sub-Article 12.03 “Other Defaults”** hereof.
- 18.02 ALTERATIONS BY CONCESSIONAIRE:** The Concessionaire shall not alter or modify the Locations or any storage/support spaces, except in accordance with **Article 4 “Improvements to the Locations”** herein, without first obtaining written approval from the Department.
- 18.03 RIGHTS TO BE EXERCISED BY DEPARTMENT:** Wherever in this Agreement rights are reserved to the County, such rights may be exercised by the Department.
- 18.04 ADMINISTRATIVE MODIFICATIONS:** It is understood and agreed that the Department, upon written notice to the Concessionaire, shall have the right to modify administratively and to revise Articles and the Exhibits to this Agreement, including the provisions of **Sub-Article 1.09 “Addition, Deletion and Modification of Locations”**, **Sub-Article 18.02 “Alterations by Concessionaire”**, **Sub-Article, 21.02 “Right to Amend”**, and **Sub-Article 21.04 “Right to Modify”**.
- 18.05 SECURITY:** The Concessionaire acknowledges and accepts full responsibility for the security and protection of the Locations. The Concessionaire fully understands and

acknowledges that any security measures deemed necessary by the Concessionaire for protection of the Locations shall be the sole responsibility of the Concessionaire and shall involve no cost to the Department.

- 18.06 RIGHTS OF DEPARTMENT AT AIRPORT:** The Department shall have the absolute right, without limitation, to make any repairs, alterations and additions to any structures and locations at the Airport. The County shall, in the exercise of such right, be free from any, and all liability to the Concessionaire for business damages occasioned during the making of such repairs, alterations and additions except those occasioned by the sole acts of negligence or intentional acts of the County its employees, or agents.
- 18.07 OTHER DEPARTMENT RIGHTS:** The Concessionaire shall be liable for any physical damage caused to the Locations by the Concessionaire, its employees, agents, contractors, subcontractors, suppliers, or it's Sub-tenants. The liability shall encompass: (i) the Concessionaire's repair of the Locations, or if the Locations cannot be repaired, payment to the Department of the fair market value replacement cost of the Locations; and (ii) any other such damages to the Department arising from the physical damage caused by the Concessionaire and its employees, agents, contractors, subcontractors or suppliers. The County may also initiate an action for specific performance and/or injunctive relief.
- 18.08 FEDERAL SUBORDINATION:** This Agreement shall be subordinate to the provisions of any existing or future agreements between the Department and the United States of America relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. All provisions of this Agreement shall be subordinate to the right of the United States of America to lease or otherwise assume control over the Airport, or any part thereof, during time of war or national emergency for military or naval use and any provisions of this Agreement inconsistent with the provisions of such lease to the United States of America shall be suspended.
- 18.09 NOTICES:** Any notices given under the provisions of this Agreement shall be in writing and shall be hand delivered or sent by facsimile transmission (providing evidence of receipt), nationally recognized overnight courier service, or Registered or Certified Mail, Return Receipt Requested, to:

To the County:  
(Mailing Address)

Director  
Miami-Dade Aviation Department  
Post Office Box 025504  
Miami, Florida 33102-5504

or (physical address):

Miami International Airport  
Terminal Building  
Director's Office  
Concourse E-5<sup>th</sup> floor  
Miami, FL 33122

To the Concessionaire:

(Address Here)

with copies to:

(Address Here)

or to such other respective addresses as the parties may designate to each other in writing from time to time. Notices by: (i) facsimile shall be deemed tendered on the date indicated on the facsimile confirmation receipt; (ii) nationally recognized overnight courier service shall be deemed tendered on the delivery date indicated on the courier service receipt; and (iii) Registered or Certified Mail shall be deemed tendered on the delivery date indicated on the Return Receipt from the United States Postal Service or on the express mail service receipt.

- 18.10 SEVERABILITY:** If any provision of this Agreement or the application thereof to either party to this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this Agreement which can be given effect without the invalid provision, and to this end, the provisions of this Agreement shall be severable.
- 18.11 RIGHTS RESERVED TO DEPARTMENT:** All rights not specifically granted to the Concessionaire by this Agreement are reserved to the Department.
- 18.12 COUNTY LIEN:** The County shall have a lien upon all personal property of the Concessionaire in the Locations to secure the payment to the Department of any unpaid monies accruing to the Department under the terms of this Agreement.
- 18.13 AUTHORIZED USES ONLY:** The Concessionaire shall not use or permit the use of the Locations or the Airport for any illegal or unauthorized purpose or for any purpose which would increase the premium rates paid by the Department on or invalidate any insurance policies of the Department or any policies of insurance written on behalf of the Concessionaire under this Agreement.
- 18.14 NO WAIVER:** There shall be no waiver of the right of the Department to demand strict performance of any of the provisions, terms and covenants of this Agreement nor shall there be any waiver of any breach, default or non-performance hereof by the Concessionaire unless such waiver is explicitly made in writing by the Department. Any previous waiver or course of dealing shall not affect the right of the Department to demand strict performance of the provisions, terms and covenants of this Agreement with performance hereof by the Concessionaire.
- 18.15 AIRPORT SECURITY PROGRAM:** Concessionaire agrees to observe all federal, state and local laws, rules and security requirements applicable to Concessionaire's operations, as now or hereafter promulgated or amended, including, but not limited to, Title 14, Part 139 of the Code of Federal Regulations, and Title 49, Part 1542 of the Code of Federal Regulations. Concessionaire agrees to comply with the Airport Security Program and the Air Operations Area (AOA) Vehicle Access Program, and amendments thereto, and to

comply with such other rules and regulations as may be reasonably prescribed by County or the Department, and to take such steps as may be necessary or directed by County or the Department to insure that employees, Sub-tenants, invitees and guests observe these requirements. If required by the Department, Concessionaire shall conduct background checks of its employees in accordance with applicable federal, state or local laws. The Department shall have the right to require the removal or replacement of any employee of Concessionaire or its Sub-tenant(s) at the Airport that the Department has reasonably determined may present a risk to public safety or the security of the Airport. If as a result of the acts or omissions of Concessionaire, its sublessees, employees, invitees or guests, County incurs any fines and/or penalties imposed by the FAA or TSA; any expense in enforcing the regulations of the FAA or TSA or the rules or regulations of County; or any expense in enforcing the Airport Security Program, then Concessionaire agrees to pay to County all such costs and expenses, including all costs of any administrative proceedings, court costs, and attorneys' fees and costs incurred by County in enforcing this provision. Concessionaire further agrees to rectify any security deficiency or other deficiency as may be determined by County, the FAA or TSA. In the event Concessionaire fails to remedy any such deficiency, County may do so at the cost and expense of Concessionaire. Concessionaire acknowledges and agrees that County may take whatever action is necessary to rectify any security deficiency or any other deficiency identified by County, the FAA or TSA.

- 18.16 INTENT OF AGREEMENT:** This Agreement is for the benefit of the parties only and does not: (a) grant rights to third party beneficiaries or to any other person; or (b) authorize non-parties to the Agreement to maintain an action for personal injuries, professional liability, or property damage pursuant to the terms or provisions of the Agreement.
- 18.17 MODIFICATIONS:** This Agreement may be modified and revised in writing and duly executed by the parties hereto. Such modification may be made unilateral by the Department only as permitted pursuant to **Sub-Article 18.04 "Administrative Modifications"**, **Sub-Article 21.02 "Right to Amend"**, and **Sub-Article 21.04 "Right to Modify"**. Any oral representation or modification concerning this Agreement shall be of no force or effect. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with this Agreement.
- 18.18 RADON DISCLOSURE:** In accordance with Section 404.056, Florida Statutes, the following disclosure is hereby made: **"Radon Gas: Radon is a naturally occurring radioactive gas. When accumulated in a building in sufficient quantities, it may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit."**
- 18.19 TRADEMARKS AND LICENSES:** The Department may, from time to time, require the Concessionaire as part of its advertising and marketing program to utilize certain patents, copyrights, trademarks, trade names, logos, computer software and other intellectual

property owned by the Department in the performance of this Agreement which patents, copyrights, trademarks, trade names, logos, computer software and intellectual property may have been created pursuant to the terms of this Agreement. Such permission, when granted, shall be evidenced by a nonexclusive license executed by the Concessionaire and the Department, on behalf of the Department granting the Concessionaire the right, license and privilege to use a specific patent, copyright, trademark, trade name, logo, computer software or other intellectual property without requiring payment of fees therefore. Failure of the parties to execute a formal license agreement shall not vest title or interest in such patent, copyright, trademark, trade name, logo computer software or intellectual property in the using party.

- **18.20 HEADINGS:** The headings of the various Articles and Sub-Articles of this Agreement, and its Table of Contents are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.
- 18.21 BINDING EFFECT:** The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns. This provision shall not constitute a waiver of any conditions prohibiting assignment or subletting.
- 18.22 GOVERNMENTAL DEPARTMENT:** Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County as a political subdivision of the State of Florida.
- 18.23 INDEPENDENT CONTRACTOR:** The Concessionaire shall perform all services described herein as an independent contractor and not as an officer, agent, servant, or employee of the Department. All personnel provided by the Concessionaire in the performance of this Agreement shall be considered to be, at all times, the sole employees of the Concessionaire under its sole discretion, and not employees or agents of the Department: Except as provided in § 2-11.1(s) of the Code, the Concessionaire represents and warrants: (i) it has not employed or retained any company or person other than a bona fide employee working solely for the Concessionaire to solicit or secure this Agreement; and (ii) it has not paid, or agreed to pay any company or other person any fee, commission, gift, or other consideration contingent upon the execution of this Agreement. A breach of this warranty makes this Agreement voidable by the Department without any liability to the Contractor for any reason.
- 18.24 OTHER LIENS:** Concessionaire shall not permit any mortgages, deeds of trust or similar liens to be imposed on the Locations, the leasehold, or the furniture, fixtures and equipment or any portion thereof. Concessionaire shall not permit or suffer any liens, including mechanics', materialmen's and tax liens to be imposed upon the Locations, or any part thereof, without promptly discharging the same. Notwithstanding the foregoing, Concessionaire may in good faith contest any such lien if Concessionaire provides a bond in an amount and form acceptable to Department in order to clear the record of any such liens. Concessionaire further agrees that it shall not sell, convey, mortgage, grant, bargain, encumber, pledge, assign or otherwise transfer its leasehold interest in the Locations or any

personal property or trade fixtures in the Locations, including any furniture, fixtures and equipment or any part thereof or permit any of the foregoing to occur. Concessionaire shall assume the defense of and indemnify and hold harmless County against any and all liens and charges of any and every nature and kind which may at any time be established against said Locations and improvements, or any part thereof, as a consequence of any act or omission of Concessionaire or as a consequence of the existence of Concessionaire's interest under this Agreement.

## **ARTICLE 19 - SUB-LEASES**

**19.01 DEPARTMENT'S RIGHTS TO APPROVE SUB-LEASES:** Concessionaire shall not sub-lease this Agreement or any of the rights and privileges hereunder, or contract for the performance of any of the services to be provided by the Concessionaire hereunder without the Department's prior written approval, which approval may be granted or withheld by Department in the exercise of its sole discretion.

## **ARTICLE 20 - WAIVER OF CLAIMS**

The Concessionaire hereby waives any and all claims it now has or may hereafter have against the County and the Department, and against any member, including, without limitation, all members of the Board of County Commissioners, officers, agents or employees of each, for any loss of anticipated profits caused by any suit or proceeding attacking directly or indirectly the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement or any part thereof, or by judgment or award in any suit or proceeding declaring this Agreement null and void or voidable, or delaying the same or any part thereof from being carried out. The Concessionaire hereby further waives any and all claims for compensation for any and all loss or damage sustained by reason of any delay in making the Locations available to the Concessionaire or by reason of any defects or deficiencies in the Locations or in the terminal building including any defect or deficiency in the Locations or in the terminal building which substantially impedes the Concessionaire's or its Sub-tenants' ability to operate a concession at the Location(s) or because of any interruption in any of the services thereto, including, but not limited to, power, telephone, heating, air conditioning or water supply systems, drainage or sewage systems, and Concessionaire hereby expressly releases the County and Department from any and all demands, claims, actions, and causes of action arising from any of such causes.

## **ARTICLE 21 - REQUIRED, GENERAL AND MISCELLANEOUS PROVISIONS**

**21.01 AGREEMENTS WITH STATE OF FLORIDA AND MIAMI-DADE COUNTY:** This Agreement shall be subject to all restrictions of record affecting the Airport and the use thereof, all federal, State, County laws, and regulations affecting the same, and shall be subject and subordinate to the provisions of any and all existing agreements between the County and the State of Florida, or its boards, agencies or commissions, and to any future agreement between or among the foregoing relative to the operation or maintenance of the Airport, the execution of which may be required as a condition precedent to the expenditure of federal, State, County funds for the development of the Airport, or any part

thereof. All provisions hereof shall be subordinate to the right of the United States to occupy or use the Airport, or any part thereof, during time of war or national emergency.

**21.02 RIGHT TO AMEND:** In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of its approval or to the obtaining of funds for improvements at the Airport, Concessionaire hereby consents to any and all such modifications and changes as may be reasonably required.

**21.03 CONCESSIONAIRE COVENANTS AND ASSURANCES:**

**A. Covenants Against Discrimination:**

1. Concessionaire on behalf of itself, its Sub-tenants, successors in interest and its assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Locations or the Airport; (2) that in the installation of any equipment at the Airport and the furnishing of services in connection therewith, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and (3) that Concessionaire shall operate at the Airport in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally assisted programs of the Department of Transportation-effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended. Likewise, Concessionaire shall comply with laws of the State of Florida, prohibiting discrimination because of race, color, religion, sex, national origin, age, handicap or marital status. Should Concessionaire authorize another person or entity, with Department's prior written consent, to provide services or benefits in or in connection with its rights or obligations under this Agreement, Concessionaire shall obtain from such person or entity a written agreement pursuant to which such person or entity shall, with respect to the services or benefits which it is authorized to provide, undertake for itself the obligations contained in this paragraph. Concessionaire shall furnish the original or a true copy of such agreement to Department.
2. Concessionaire will provide and cause its Sub-tenants to provide all information and reports required by said Code of Federal Regulations, or by directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its locations as may be determined by Department or the Federal Aviation Administration to be pertinent to ascertain whether there has been compliance with said Regulations and directives. Where any information required of Concessionaire is in the exclusive possession of another who fails or refuses to furnish this information, Concessionaire shall so certify to Department or the Federal Aviation Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

3. In the event of a breach of any of the above nondiscrimination covenants, Department shall have the right to impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate. Such rights shall include the right to terminate this Agreement and to reenter and repossess the Locations and the improvements thereto, and hold the same as if this Agreement had never been made. The rights granted to Department by the foregoing sentence shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.
4. Concessionaire assures County that no person shall be excluded on the grounds or race, creed, color, national origin or gender from participating in or receiving the services or benefits of any program or activity covered by Title 14, Code of Federal Regulations, Part 152, Subpart E, Federal Aviation Administration, Nondiscrimination in Airport Aid Program, and that it will be bound by and comply with all other applicable provisions of such Subpart E, as it may be amended from time to time. Concessionaire also assures County that it will require its covered suborganizations to provide assurances to the same effect and provide copies thereof to the Department.
5. Concessionaire further assures County that it and its Sub-tenants will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted at or in connection with its operations at the Locations. Concessionaire also assures County that it will require its contractors and Sub-tenants to provide assurances to the same effect and ensure that such assurances are included in contracts and Sub-Lease agreements at all tiers which are entered into in connection with Concessionaire's services hereunder.
6.
  - a) This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, Subpart F. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or gender in connection with the award or performance of any concession agreement covered by 49 CFR Part 23, Subpart F.
  - b) Concessionaire agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements.
7. County may from time to time be required by the United States Government or one or more of its agencies, to adopt additional or amended provisions including nondiscrimination provisions concerning the use and operation of the Airport, and Concessionaire agrees that it will adopt such requirements as part of this Agreement.

**21.04 RIGHT TO MODIFY:** The parties hereto covenant and agree that, during the Term and any Extension, if applicable, this Agreement may be unilaterally modified by the Department, upon advice of its legal counsel, in order to conform to judicial or Federal

Trade Commission or FAA rulings or opinions. This Sub-Article shall not preclude Concessionaire from contesting said rulings or opinions, but the Concessionaire shall abide by the unilateral change while such a challenge is pending. Except as otherwise specifically provided in this Agreement, this Agreement may not be modified except by a written instrument signed by both parties.

**21.05 TAX EXEMPT STATUS OF DEPARTMENT REVENUE BONDS:** The Concessionaire agrees to comply promptly with any applicable provisions of any federal tax statute, and all regulations or other binding authority promulgated or decided hereunder, as required to permit the Department's capital expansion projects to be planned and constructed by the Department with revenue bonds the interest on which is generally exempt from federal income taxation, other than any applicable individual or corporate alternative minimum taxes (and other than during any period while such revenue bonds are held by a "substantial user" of the projects financed by such revenue bonds or a "related person" to a "substantial user"), including, without limitation, the execution by the Concessionaire and delivery to the Department of an election not to claim depreciation or any investment credit with respect to any portion of such capital expansion projects or any other portion of the Airport System.

**21.06 REMEDIES:** All remedies provided in this Agreement shall be deemed cumulative and additional, and not in lieu of or exclusive of each other or of any other remedy available at law or in equity arising hereunder.

**21.07 NOT USED.**

**21.08 REGULATIONS OF DEPARTMENT:** The rights and privileges granted to the Concessionaire hereunder and the occupancy and use by the Concessionaire and the Concessionaire's Sub-tenants of the Locations shall at all times be subject to reasonable rules and regulations of Department as the same are now or may hereafter be prescribed through the lawful exercise of its power, including, but not limited to, all applicable provisions of Department's Policy and Procedures Manual as the same may be amended from time to time.

**21.09 INTEREST:** Any sums payable to the Department by the Concessionaire under any provisions of this Agreement, which may be amended from time to time, which are not paid when due shall bear interest at the rate of one and one half percent (1 1/2%) per month (or, if less, the maximum rate of interest allowed by law) from the due date thereof until paid.

**21.10 MISCELLANEOUS PROVISIONS:** The Concessionaire, its Sub-tenants and its agents, contractors, sub-contractors and/or employees shall promptly observe and comply with applicable provisions of all federal, State, and local statutes, ordinances, regulations and rules which govern or apply to the Concessionaire or to its services or operations hereunder.

1. The Concessionaire shall, at its own cost and expense, procure and keep in force during the Term and any Extension thereto if applicable, all necessary licenses,

registrations, certificates, bonds, permits, and other authorizations as are required by law in order for the Concessionaire to provide its services hereunder and shall pay all taxes, (including sales and use taxes), assessments including, without limitation, storm water utility fees and impact fees which may be assessed, levied, exacted or imposed by all governmental authorities having jurisdiction on Concessionaire's property, on its services, on its Gross Revenues, on its income, on this Agreement and the fees payable to the County hereunder, on the rights and privileges granted to the Concessionaire herein, on the Locations and on any and all equipment installed on the Locations and the Concessionaire shall make and file all applications, reports, and returns required in connection therewith.

2. The Concessionaire agrees to repair promptly, at its sole cost and expense and in a manner acceptable to the Department, any damage caused by the Concessionaire or any of its Sub-tenants, officers, agents, employees, contractors, subcontractors, licensees or invitees to the Airport or any equipment or property located thereon.
3. The Concessionaire is not authorized to act as the County's agent hereunder and shall have no authority, express or implied, to act for or bind the County hereunder and nothing contained in this Agreement shall be deemed or construed by the County or the Concessionaire or by any third party to create the relationship of partnership or of joint venture. No provision of this Agreement shall be deemed to make the County the joint employer of any employee of the Concessionaire.
4. The County shall have the right during the Concessionaire's normal business hours (and at any time during an emergency) to inspect the Locations and the property of the Concessionaire located thereon, in order to enforce this Agreement, to enforce applicable laws and regulations, and to protect persons and property.
5. The Article and paragraph headings herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision of this Agreement.
6. Time is expressed to be the essence of this Agreement.
7. This Agreement will inure to the benefit of and shall be binding upon the parties hereto and their authorized successors and assigns.
8. If any covenant, condition or provision of this Agreement is held to be invalid by any court of competent jurisdiction, such holding shall not affect the validity of any other covenant, condition or provision contain herein.
9. Except as otherwise provide herein, if certain action may be taken only with the consent or approval of the County, or if a determination or judgment is to be made by the County, such consent or approval may be granted or withheld, or such determination or judgment shall be made, in the sole discretion of the County or the County.
10. The County's Ethics Commission has also adopted rules delineating the responsibilities of lobbyists and County personnel in implementing the requirements of the lobbying section of the Conflict of Interest and Code of Ethics Ordinance. The Proposer shall comply with these requirements.

- 21.11 FORCE MAJEURE:** Strictly in relation to the obligations of each party to the other under this Agreement, and not for any other purpose or for any benefit of a third party, each party shall be excused from the timely performance of their respective obligations or undertakings provided in this Agreement, if the performance of such obligations or undertakings is prevented or delayed, retarded or hindered by strikes, lockouts, boycotts, actions of labor unions, labor disputes, labor disruptions, work stoppages or slowdowns, unless involving employees of the Concessionaire, embargo's, general shortages of labor, equipment, locations, materials or supplies in the open market, acts of God, acts of the public enemy, acts of governmental authority, including, without limitation, the FAA, the DOT, the TSA, the EPA, the DOJ, or civil and defense authorities, extreme weather conditions, war (declared or undeclared), invasion, insurrection, terrorism, riots, rebellion or sabotage.
- 21.12 ENTIRE AGREEMENT:** This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and any prior agreements, representations or statements made with respect to such subject matter, whether oral or written, and any contemporaneous oral agreements, representations or statements with respect to such subject matter, are merged herein; provided, however, that Concessionaire hereby affirms the completeness and accuracy of the information provided by Concessionaire to County in their Proposal, and in all attachments thereto and enclosures therewith, submitted by Concessionaire to County in connection with the award of this Agreement. None of the provisions, terms or conditions contained in the Agreement may be modified or otherwise altered except as may be specifically authorized by **Sub-Article 18.04** or the Sub-Articles stated therein, or by written instrument executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials as of the date first above written.

**CONCESSIONAIRE**

SMART CARTS, INC.  
(Legal Name of Corporation)

**ATTEST:**

Secretary

John C. Carr  
(Signature and Seal)

John C. Carr Secretary  
(Type Name & Title)

By:

Edward D. Rudis  
Concessionaire - Signature

Name: EDWARD D. RUDIS  
PRESIDENT & CEO  
(Type Name & Title)

**INDIVIDUAL, PARTNERSHIP OR JOINT VENTURE**

\_\_\_\_\_  
Legal Name  
By: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
(Type Name & Title)

\_\_\_\_\_  
Legal Name  
By: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
(Type Name & Title)

Attest: \_\_\_\_\_

Name of Managing Joint Venturer:

\_\_\_\_\_

Witness: \_\_\_\_\_

By:

Signature of Authorized Representative  
of the Joint Venture

Corporate Seal

(ATTACH ADDITIONAL SHEETS FOR EACH JOINT VENTURER, AS NEEDED)

**BOARD OF COUNTY COMMISSIONERS  
MIAMI-DADE COUNTY, FLORIDA**

By: \_\_\_\_\_  
County Manager

Approved for Form  
and Legal Sufficiency

Attest: Harvey Ruvin, Clerk

\_\_\_\_\_  
Assistant County Attorney

By: \_\_\_\_\_  
Deputy Clerk

Resolution No.: \_\_\_\_\_

Date: \_\_\_\_\_

# Memorandum



**Date:** March 23, 2007

**To:** George M. Burgess  
County Manager

**From:** Miguel Southwell, Chairperson  
Negotiation Committee

**Subject:** Negotiation Committee Report - RFP Luggage Cart Concession Program  
At Miami International Airport, No. MDAD-08-05

Attached are six (6) copies of the proposed Luggage Cart Concession Program Services Agreement for the Miami Dade Aviation Department, ("MDAD") negotiated by County staff with the following firm:

- **Smarte Carte, Inc.**

**DESCRIPTION OF SERVICES:** The Concessionaire is responsible for furnishing, installing, operating, managing, and maintaining a first-class luggage cart concession program in all pre-security (landside) and post-security (airside) areas of the Airport. Luggage cart services shall be available for the traveling public twenty-four (24) hours a day, seven (7) days a week.

Concessionaire shall provide all necessary carts and cart management units (CMUs). The Concessionaire shall provide a minimum of 3,200 carts in the baggage claim portion of the Federal Inspection Services (FIS) area free of charge to arriving passengers. This minimum number of carts will be adjusted annually or more frequently in direct proportion to changes in the number of passengers arriving in the FIS areas. The Concessionaire shall provide approximately 1,000 carts in the landside (pre-security) areas of the Terminals including ticketing and bag claim areas inside the Terminals, as well as exterior curbsides on the departure and arrival levels. Concessionaire shall ensure carts are returned to the CMUs in a safe and orderly fashion without interfering with the traveling public.

## **PAYMENTS TO THE COUNTY**

The Concessionaire shall pay to the County a Minimum Annual Guarantee (MAG) of \$225,000. This MAG is to be prorated and payable in twelve equal monthly payments in U.S. funds, on the first day of each month in advance and without billing or demand.

The Concessionaire shall pay the Department a percentage fee of 32 percent of Gross Revenues or the Minimum Annual Guarantee, whichever is greater.

## **COUNTY PAYMENT TO CONCESSIONAIRE FOR PROVIDING FREE CARTS TO PASSENGERS IN FIS AREA**

The County shall pay to the Concessionaire on a monthly basis, seventy (\$.70) per use of any cart used in the FIS areas.

**Negotiation Committee Report**  
**RFP No. MDAD-08-05**  
**Page 2 of 3**

**TERM OF AGREEMENT**

The term of the agreement is five (5) years with an option of one (1) two-year (2-year) extension at the sole discretion of MDAD.

**SELECTION PROCESS**

MDAD advertised a Request for Proposals ("RFP") to solicit proposals to manage and operate the Luggage Cart Concession Program at Miami International Airport (MIA). Four (4) proposers responded to the County's public advertisement: Flight Services & System; TopCart Orlando LLC; Bagport America LLC; and Smarte Carte, Inc.

During the Selection Committee meeting, the Committee was informed that the project has an ACDBE goal of 20 percent of gross revenues and that the County Attorney's Office found one Proposer, Flight Services System, non-responsive in regards to the ACDBE goal requirement. TopCart Orlando LLC, Bagport America LLC, and Smarte Carte, Inc. were found responsive by the County Attorney's Office. At the end of the meeting, the Committee passed a motion to find the responsive firms responsible.

In determining the overall ranking, initially, a non-local proposer Bagport America LLC received the largest number of points by the Committee; Bagport offered to pay MDAD 32 percent of its gross revenue. It was also noted that the second highest ranked firm Smarte Carte, Inc., was a local Proposer and was within 5% of the ranking obtained by Bagport America LLC. As Smarte Carte, Inc., which offered to pay MDAD 25 percent of gross revenue, was eligible for local preference consideration, the local preference provisions were applied which resulted in Smarte Carte, Inc. being the first ranked firm.

Smarte Carte, Inc. was found by the Committee to be qualified to provide the desired services and the Committee recommended that the firm be forwarded to the County Manager for execution of the agreement. However, after further review, the Department determined that there were terms that needed to be negotiated including the percentage fee, and subsequently, on January 25, 2007 your office appointed a Negotiation Committee to negotiate an agreement.

The Negotiation Committee negotiated the percentage fee and other terms of the Agreement, which resulted in Smarte Carte, Inc. increasing its percentage fee paid to the Department from 25 percent to 32 percent.

A more detailed analysis of the evaluation and selection process is included in the attached Evaluation/Selection Committee's report.

Attachment  
Clerk of the Board of County Commissioners

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**Negotiation Committee Report**  
**RFP No. MDAD-08-05**  
**Page 3 of 3**

**EVALUATION / SELECTION COMMITTEE:**

AnaMaria Saks, MDAD (Non-voting, Chairperson)  
Sarah Abate, MDAD  
Luis Arce, MDAD  
Hydi Webb, Seaport (absent)  
Sheri McGriff, DBD  
Zainab Salim, MPO

**NEGOTIATION COMMITTEE**

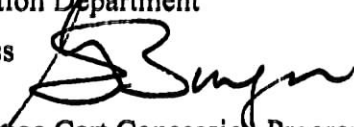
Miguel Southwell, MDAD, Chairperson  
Sarah Abate, MDAD  
Sheri McGriff, DBD

# Memorandum



**Date:** January 25, 2007

**To:** AnaMaria Saks, Chairperson  
Evaluation/Selection Committee  
Miami-Dade Aviation Department

**From:** George M. Burgess  
County Manager 

**Subject:** MDAD RFP Luggage Cart Concession Program  
At Miami International Airport, RFP No. MDAD-08-05

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With reference to my report of December 8, 2006 (copy attached) regarding the execution of the Concession Agreement for the subject project, this is to advise you that pursuant to Administrative Order 3-38, I hereby authorize the Department to proceed with negotiations for the Luggage Cart Concession Program at Miami International Airport with the first ranked firm, SmarteCarte, Inc.

As the Request for Proposal, Section 4 entitled "Evaluation/Selection Process", Sub-section VIII entitled "Negotiations" provides that ..... "The County reserves the right to enter into contract negotiations with the recommended Proposer", the Department has advised, after further review, that there are terms that it would like to negotiate including the percentage fee and has requested authorization to proceed as provided in the RFP.

Consequently, my report of December 8, 2006 authorizing the Department to execute the Agreement with the top ranked firm for the subject project is hereby set-aside, and authorization is granted to proceed as requested.

Furthermore, I hereby appoint the following Negotiation Committee for the purpose of negotiating the subject Agreement for the Miami-Dade Aviation Department with the firm listed above.

Miguel Southwell, MDAD, Chairpeson  
Sarah Abate, MDAD  
Sheri McGriff, DBD

The Negotiation Committee is to proceed with the agreement negotiations and submit the signed agreement to this Office no later than 60 days from the date of this memorandum. Transmit with the signed agreement, a cover memorandum written from the Negotiation Committee to the County Manager including the below listed information:

1. A general description of the services.
2. A brief description of the selection process.
3. The completion dates of the services.

If a satisfactory agreement cannot be reached with the firm within the 60 day period, a report is to be prepared fully explaining all problems resulting from the negotiations. The final agreement and report should be sent to this Office.

**Attachments**


- c: Clerk of the Board of County Commissioners  
**EVALUATION / SELECTION COMMITTEE**  
AnaMaria Saks, MDAD (Non-voting, Chairperson)  
Sarah Abate, MDAD  
Luis Arce, MDAD  
Hydi Webb, Seaport (absent)  
Sheri McGriff, DBD  
Zainab Salim, MPO

# Memorandum



**Date:** December 8, 2006

**To:** AnaMaria Saks, Chairperson  
Evaluation/Selection Committee  
Miami-Dade Aviation Department

**From:** George M. Burges  
County Manager 

**Subject:** MDAD RFP Luggage Cart Concession Program  
At Miami International Airport, RFP No. MDAD-08-05

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With reference to your report of December 5, 2006 (copy attached) concerning the above captioned subject, this is to advise you that pursuant to Administrative Order 3-38, I hereby approve the Department to proceed to execute a Concession Agreement for the Luggage Cart Concession Program at Miami International Airport with the first ranked firm listed below:

1. **SmarteCarte, Inc.**
2. **Bagport America LLC**
3. **TopCart Orlando LLC**

In accordance with the Request for Proposals Section 4 entitled "Evaluation/Selection Process", Sub-section VIII entitled "Negotiations" which states ".....The County may award the Agreement on the basis of initial offers received, without discussion or negotiation....", Therefore, each initial offer should contain the Proposer's best terms from a monetary and technical standpoint. The Committee has determined that negotiations are not necessary. Therefore, the Department is authorized to proceed to obtain execution of the advertised Concession Agreement with the first ranked firm above. The Department will transmit with the signed agreement, a cover memorandum to include the below listed information:

1. A general description of the services.
2. A brief description of the selection process.
3. The completion dates of the services.

## Attachments

c: Clerk of the Board of County Commissioners  
**EVALUATION / SELECTION COMMITTEE**  
AnaMaria Saks, MDAD (Non-voting, Chairperson)  
Sarah Abate, MDAD  
Luis Arce, MDAD  
Hydi Webb, Seaport (absent)  
Sheri McGriff, DBD  
Zainab Salim, MPO

> 1

Mr. George M. Burgess  
Evaluation/Selection Committee Report  
Request for Proposals for Luggage Cart Concession Program  
RFP No. MDAD-08-05  
2 of 2

Representatives from the proposers made a 40-minute presentation and had 20 minutes for questions and answers. Upon conclusion of the presentations, the Chairperson conducted a general discussion regarding the firms. The Committee proceeded in an evaluation and ranking process of the technical points based on the proposal submissions and oral presentations.

Following the ranking of the technical points, and as provided in the Request for Proposals, the sealed price envelopes were opened and read aloud. MDAD staff then proceeded to apply the formula provided for the calculation of the percentage score as defined in the RFP to determine the percentage score. Staff then proceeded to calculate the overall ranking. The overall ranking consisted of the technical points and percentage scores. The firms were subsequently ranked according to the overall ranking. The Committee recommended that the first ranked Proposer be forwarded to the County Manager for award as follows:

1. **SmarteCarte, Inc.**
2. **Bagport America LLC**
3. **TopCart Orlando LLC**

Attached are the following items to substantiate the actions taken to date:

1. Summary Minutes of the Prescreening
2. Summary Minutes of the Public Hearing

c: Clerk of the Board of County Commissioners

**EVALUATION/SELECTION COMMITTEE:**

AnaMaria Saks, MDAD (Non-voting, Chairperson)

Sarah Abate, MDAD

Luis Arce, MDAD

Hydi Webb, Seaport (absent)

Sheri McGriff, DBD

Zainab Salim, MPO

# Memorandum



**Date:** December 5, 2006

**To:** George M. Burgess  
County Manager

**From:** *Ana Maria Saks*  
AnaMaria Saks, Chairperson  
Evaluation/Selection Committee  
Miami-Dade Aviation Department

**Subject:** Evaluation/Selection Committee Report- Miami-Dade Aviation Department  
Request for Proposals for Luggage Cart Concession Program  
RFP No. MDAD-08-05

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As authorized by Administrative Order 3-38 and your memorandum dated August 21, 2006 the designated Evaluation/Selection Committee (Committee) met and conducted the selection process for the subject project on November 13, 2006 for the prescreening meeting and public hearing meeting. This process was conducted in accordance with the procedure specified by the Request for Proposals (RFP) as described in the attached summary minutes.

## **PRESCREENING MEETING OF NOVEMBER 13, 2006 (9:30 AM)**

As announced in the Metro Calendar and the "Daily Business Review", the Committee met on November 13, 2006 at the Miami International Airport Hotel, Concourse E, 7<sup>th</sup> Floor, Conference Rooms E and F, Miami, Florida and undertook a review of the proposals submitted by the following four (4) Proposers that responded to the public notice: Flight Services & System; TopCart Orlando LLC; Bagport America LLC; and SmarteCarte Inc.

During the course of the meeting, the Committee was informed that the project has an ACDBE specific goal of 20% of gross revenues and that the County Attorney's office found one Proposer Flight Services System non-responsive in regards to the ACDBE goal requirement. TopCart Orlando LLC; Bagport America LLC; and SmarteCarte were found responsive by the County Attorney's Office. At the end of the meeting the Committee undertook a motion to find the responsive firms responsible.

## **PUBLIC HEARING MEETING OF NOVEMBER 13, 2006 (11:00 AM)**

As advertised in the Metro Calendar and the "Daily Business Review", a Committee meeting was held on November 13, 2006 at the Miami International Airport Hotel, Concourse E, 7<sup>th</sup> Floor, Conference Rooms E and F, Miami, Florida. At this meeting, the Committee heard oral presentations from the three (3) responsive Proposers listed above.

Representatives from the proposers made a 40-minute presentation and had 20 minutes for questions and answers. Upon conclusion of the presentations, the Chairperson conducted a general discussion regarding the firms. The Committee proceeded in an evaluation and ranking process of the technical points based on the proposal submissions and oral presentations.

Following the ranking of the technical points, and as provided in the Request for Proposals, the sealed price envelopes were opened and read aloud. MDAD staff then proceeded to apply the formula provided for the calculation of the percentage score as defined in the RFP to determine the percentage score. Staff then proceeded to calculate the overall ranking. The overall ranking consisted of the technical points and percentage scores. The firms were subsequently ranked according to the overall ranking. The Committee recommended that the first ranked Proposer be forwarded to the County Manager for award as follows:

1. **SmarteCarte, Inc.**
2. **Bagport America LLC**
3. **TopCart Orlando LLC**

Attached are the following items to substantiate the actions taken to date:

1. Summary Minutes of the Prescreening
2. Summary Minutes of the Public Hearing

c: Clerk of the Board of County Commissioners

**EVALUATION/SELECTION COMMITTEE:**

AnaMaria Saks, MDAD (Non-voting, Chairperson)

Sarah Abate, MDAD

Luis Arce, MDAD

Hydi Webb, Seaport (absent)

Sheri McGriff, DBD

Zainab Salim, MPO

**MIAMI-DADE AVIATION DEPARTMENT**  
**REQUEST FOR PROPOSALS**  
**FOR NON-EXCLUSIVE LUGGAGE CART CONCESSION PROGRAM**  
**AT MIAMI INTERNATIONAL AIRPORT**

**RFP NO. MDAD-08-05**

**SUMMARY MINUTES**  
**OF PRESCREENING**  
**MONDAY, NOVEMBER 13, 2006**

As authorized by the County Manager's memorandum dated August 21, 2006, the individuals listed below met on Monday, November 13, 2006 at the Miami-Dade Aviation Department (MDAD), Miami International Airport Hotel, Concourse E, 7th Floor, Conference Rooms E and F, Miami, Florida, to review the materials submitted by the (4) four Proposers in response to the public notice regarding the subject Request for Proposals (RFP) as follows:

- Flight Services System
- Top Cart Orlando LLC
- Bagport America LLC
- SmarteCarte Inc.

**EVALUATION SELECTION COMMITTEE**

AnaMaria Saks, MDAD (Non-voting, Chairperson)  
Sarah Abate, MDAD  
Luis Arce, MDAD  
Hydi Webb, Seaport (see note below)  
Sheri McGriff, DBD  
Zainab Salim MPO

**SUPPORT STAFF**

Roy Wood, CAO  
Patricia Ryan, MDAD  
Betty Ortiz-Valdez, MDAD

Ms. AnaMaria Saks, Contracting Officer, opened the meeting by presenting the Evaluation/Selection Committee (Committee) with an overview of the process. The Committee members were provided copies of the proposals and were requested to review the proposals prior to today's meeting.

Ms. AnaMaria Saks advised the Committee that there was an ACDBE specific goal of 20% of gross revenues. William Brown of MDAD Minority Affairs advised the Committee that three Proposers: Top Cart Orlando LLC, Bagport America LLC, and SmarteCarte Inc. were in

compliance with the ACDBE requirements. Flight Services System was found non-responsive by the County Attorney's Office with regard to the ACDBE goal requirement.

The Committee was then reminded of their responsibilities as Committee members pursuant to the County Manager's memo dated August 21, 2006 and the RFP.

The following action was then taken:

Moved: Sheri McGriff

Motion: That the committee will not consider further the proposal submitted by Flight Services System as they have been found non-responsive by the County Attorney's Office.

Seconded: Zainab Salim

Action: Accepted unanimously

The Committee was further advised the three (3) remaining Proposers were found responsive by the County Attorney's Office.

Mr. Diaz from Commercial Operations gave an overview of the Scope of Services.

Ms. AnaMaria Saks then directed the Committee's attention to the submitted proposals. The Committee members were advised that it was their responsibility to determine whether each of the three (3) remaining responding Proposers were responsible and met the minimum qualifications requirements as set forth in the RFP. The Committee members proceeded to review the proposals as it relates to responsibility and minimum qualification requirements.

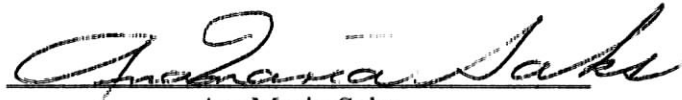
The Committee proceeded with the following action:

Moved: Sheri McGriff

Motion: That Top Cart Orlando LLC; Bagport America LLC; and Smarte Carte Inc. were found responsible.

Seconded: Zainab Salim

Action: Accepted unanimously

A handwritten signature in cursive script, reading "AnaMaria Saks", written over a horizontal line.

AnaMaria Saks  
Chairperson

**NOTE** - Assistant County Attorney Roy Wood advised that as a result of Hydi's inability to stay all day she was excused from the meetings.

<b>REQUEST FOR PROPOSAL</b> <b>LUGGAGE CART CONCESSION PROGRAM</b> <b>AT MIAMI INTERNATIONAL AIRPORT</b> <b>RFP MDAD-08-05</b>	<b>CONTRACT MEASURES:</b> <b>ACDBE 20%</b>
<b>INVENTORY OF SUBMITTED PROPOSALS</b>	<b>RFP DUE DATE: September 8, 2006</b> <b>PAGE 1 of 9</b>

**NAME OF PROPOSER:** SmarteCarte  
**ADDRESS:** 4455 White Bear Parkway, St. Paul, MN 55110-7641  
**TELEPHONE/FAX NUMBERS:** 651-653-6019 / 651-426-0927  
**E-MAIL ADDRESS:** multerm@smartecarte.com

PROPOSAL DOCUMENTS	WAS THE INFORMATION/DOCUMENTS PROVIDED?	NOTES
Minimum Qualification and Technical Proposal Form (Questionnaire Form) ( <b>Appendix A</b> )	Y	
<b>MINIMUM QUALIFICATIONS</b>		
<p>Proposers shall supply evidence that they meet the minimum qualifications established for this RFP as follows:</p> <p>Three (3) years continuous experience within the last five (5) years in the direct management, installation and operation of a business in an airport, other transportation center, or shopping mall venues. This experience must have included an operation that can demonstrate customer service related experience, dealing directly with the public and generating at least \$500,000 in annual sales. If Proposer is a joint venture, then at least one of the joint venture partners must satisfy all of the foregoing Minimum Qualification Requirements. If the proposer is a New Entity other than a Joint Venture then the managing or principal member or other person listed in 8, b of Appendix A must satisfy all of the foregoing minimum qualifications requirements.</p>	Y	See tab Minimum Qualifications
<b>Condition of Award</b> - Must be authorized to do business in the State of Florida	Y	
Percentage B Form ( <b>Appendix B</b> )	Y	
Airport Concession Disadvantaged Business Enterprises Participation Plan/Provision ( <b>Appendix C</b> )	Y	
Acknowledgement of Addenda ( <b>Appendix D</b> )	Y	
Proposal Bond Guaranty ( <b>Appendix E</b> )	Y	
Lobbyist Registration for Oral Presentations ( <b>Appendix F</b> )	Y	
Local Business Preference ( <b>Appendix I</b> )	Y	
Single Execution Affidavits and Condition of Award Certificates ( <b>Appendix J</b> )	Y	

**REQUEST FOR PROPOSAL  
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**INVENTORY OF SUBMITTED PROPOSALS**

**RFP DUE DATE: September 8, 2006  
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<b>NAME OF PROPOSER:</b>	SmarteCarte
<b>ADDRESS:</b>	4455 White Bear Parkway, St. Paul, MN 55110-7641
<b>TELEPHONE/FAX NUMBERS:</b>	651-653-6019 / 651-426-0927
<b>E-MAIL ADDRESS:</b>	multerm@smartecarte.com

PROPOSAL DOCUMENTS	WAS THE INFORMATION/DOCUMENTS PROVIDED?	NOTES
Affidavit for Public Entity Crimes	Y	
Affidavit for Debarment Disclosure	Y	
Affidavit for Criminal Record	Y	
Affidavit for Disclosure of Ownership	Y	
Affidavit for Affirmative Action Plan	Y	
<b>Condition of Award Affidavits</b>	Y	
Disability Nondiscrimination	Y	
Family Leave	Y	
Domestic Leave	Y	
Currently due Fees and Taxes	Y	
Drug Free Work Place	Y	
Current in County Obligations	Y	
Code of Business Ethics	Y	
<b>A. TABLE OF CONTENTS</b> The table of Contents should outline the major areas of the proposal in sequential order. All pages of the Proposal, including the enclosures, must be clearly and consecutively numbered and correspond to the Table of Contents. A Proposer's checklist should list all requested information and the associated page number in the Minimum Qualifications Form and Technical Proposal. If additional information is provided as part of or in support of the Proposal, this information should be referenced here also.	Y	See i & ii
<b>B. EXECUTIVE SUMMARY</b> Provide a brief summary describing the Proposer's ability to perform the Work requested in this RFP; a history of the Proposer's background and experience in providing similar services; the qualifications of the Proposer's personnel to be assigned to this project and a brief history of their background and experience; and, any other information called for by this RFP which the Proposer deems relevant. This summary should be brief and concise to advise the reader of the basic services offered, and the experience and qualifications of the Proposer and staff. The executive summary should be no longer than three (3) pages.	Y	See tab Executive Summary Pages, 1 & 2

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PROPOSAL DOCUMENTS	WAS THE INFORMATION/DOCUMENTS PROVIDED?	NOTES
<b>C. MINIMUM QUALIFICATIONS FORM</b> <p>The "Minimum Qualifications Form", Appendix A – Part 1 should be fully completed, signed, and notarized as required. A Minimum Qualifications Form submitted which does not include necessary information may be deemed non-responsive and may not be considered for award of any Agreement; such failure to submit Appendix A "Minimum Qualifications Form" shall render the Proposal non-responsive.</p>	Y	
<b>D. FINANCIAL CAPACITY TO PERFORM/FINANCING</b> <p>The Proposer shall provide copies of certified financial statements (last two fiscal years - which include a balance sheet and income statements) prepared in accordance with generally accepted accounting principals (GAAP) for the Proposer and any individual companies comprising a team or joint venture that are signatories to the guaranteed payment of the MAG and Fee. If certified financial statements are not available, the Proposer may submit its complete federal tax return and a copy of its most recent financial statements for the last two years. Proposer shall describe the financial relationship and responsibilities with regard to any joint ventures, subsidiaries or related companies.</p> <p>All Proposers must provide information on the percentage of equity of any partnerships formed and an estimate of working capital and reserves. Equity shares should be specified on the form and on additional sheets, if necessary. Proposers should specify the source of funds (cash, bank loan, etc.) for the start-up costs.</p>	Y	See tab Financial Capacity Pages 16 & 17
<p>1. <b>Capital Investment:</b> Proposer shall submit a financial plan, which will indicate the source of funding to be used for capital requirements, and the amount of working capital the Proposer determines will be required to maintain operations (submit a pro forma statement of projected results of operation for a two-year period – Do not include</p>	Y	See tab Financial Capacity Page 16

<b>REQUEST FOR PROPOSAL</b> <b>LUGGAGE CART CONCESSION PROGRAM</b> <b>AT MIAMI INTERNATIONAL AIRPORT</b> <b>RFP MDAD-08-05</b>	<b>CONTRACT MEASURES:</b> <b>ACDBE 20%</b>
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**NAME OF PROPOSER:** SmarteCarte  
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**E-MAIL ADDRESS:** multerm@smartecarte.com

PROPOSAL DOCUMENTS	WAS THE INFORMATION/DOCUMENTS PROVIDED?	NOTES
any information on Payment made to the Department in the pro forma).		
2. <b>References:</b> The Proposer must list three letters of business reference and contact information for the authors of those letters (to allow the Department to verify this information).	Y	See tab Financial Capacity Pages 16 & 17, and Exhibit 4
3. <b>Financial Background Information:</b> The Proposer shall include an interim balance sheet and income statement reflecting the Proposer's current financial conditions and any significant financial events occurring subsequent to the closing date of the most recent certified financial statements or Federal Tax Returns as required in first paragraph of this sub section "D".	Y	See tab Financial Capacity Page 17, and Exhibit 5
4. <b>Requested Information from Subsidiaries:</b> If Proposer operates as a subsidiary of another company, include the appropriate financial information as requested above for both the parent and subsidiary. If parent company guarantees the MAG, fees and the Lease and Concession Agreement for the Proposer, provide a letter from an authorized representative of the parent company attesting to the parent company's intent to guarantee the MAG, fees and Lease and Concession Agreement.	Y	See tab Financial Capacity Page 17, and Exhibits 2 and 6
5. <b>Financial Capacity:</b> Submit a proposed operating budget (pro forma) statement of projected results of the operation for a two year period (do not include any Payments made to the Department).	Y	See tab Financial Capacity Page 19, and Exhibit 3
<b>E. EXPERIENCE AND QUALIFICATIONS</b>  Proposer shall explain in detail the number of years and extent of Proposer's industry experience, with special emphasis upon prior experience with the management and operation of luggage cart operations at airports, transportation centers, shopping centers, or marketplaces. Proposer must also provide details on the pertinent experience of persons who will be directly involved in the management and operations of the Luggage Cart Operation as follows:	Y	See tab Experience and Qualifications Pages 18 & 19

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PROPOSAL DOCUMENTS	WAS THE INFORMATION/DOCUMENTS PROVIDED?	NOTES
1. Provide the names and addresses of the luggage cart contracts (up to ten) which the Proposer currently operates and/or manages or has operated/managed in the last five years at other airports, shopping centers, or other locations where luggage cart rental systems are similar to airport systems, and the number of years the Proposer has operated at each primary location. Include the number of carts, CMUs locations, rental rate and annual sales in each market. Include any general aeronautical contracts that the Proposer has managed/operated or manages/operates, in the past five years.	Y	See tab Experience and Qualifications Pages 18 & 19
2. The location, address, phone number, and person to contact at the Proposer's most comparable location. Include photographs with a descriptive outline of the most comparable location and approximate gross receipts for the most recent fiscal year. Provide the number of CMUs and the number of luggage carts and specify the term of the contract.	Y	See tab Experience and Qualifications Pages 20 & 21
3. Explain how the Proposer's experience and qualifications qualify the Proposer to develop and operate a luggage cart concession. Provide the name, location, and date of any of the Proposer's luggage cart contracts which have been terminated and reason for termination prior to the expiration of their term, within the past five (5) years.	Y	See tab Experience and Qualifications Pages 22 thru 27
<b>F. EQUIPMENT DESIGN AND FUNCTION</b>		
1. <b>Equipment Submittals</b>	Y	See tab Equipment, Design and Function - Page 28
i. Describe the features that make your equipment the best for MIA. How are the safety and utility maximized in these features?		
ii. Describe how the Luggage Carts, the CMUs and the proposed signage to be affixed to the CMUs meet the requirements of Section I, IV of this RFP. The Department, may require the Proposer to demonstrate the equipment at an oral presentation.	Y	See tab Equipment, Design and Function Page 29 and Exhibit 7

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<b>NAME OF PROPOSER:</b>	SmarteCarte
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<b>TELEPHONE/FAX NUMBERS:</b>	651-653-6019 / 651-426-0927
<b>E-MAIL ADDRESS:</b>	multerm@smartecarte.com

PROPOSAL DOCUMENTS	WAS THE INFORMATION/DOCUMENTS PROVIDED?	NOTES
A color photo of the proposed luggage cart, the CMUs equipment, and the sample of the CMUs signage to be affixed to the CMUs.	Y	See tab Equipment, Submittals Page 29 and Exhibit A
<b>2. Luggage Cart and Cart Management Units (CMUs) Specifications</b>		
i. Provide a complete specification from the manufacturer including dimensions and materials used for CMUs units and luggage carts, including the construction of the wheels, the frame, cart handles, fasteners and support equipment. Provide name and address of manufacturer of CMUs and carts.	Y	See tab Equipment, Design and Function Pages 31 and 32
ii. Specify the CMUs unit power requirements and capacities.	Y	Page 32
iii. Specify the reliability of the proposed CMUs, and Proposer's general experience with this equipment at other similar locations and the number of years the equipment has been in place overall.	Y	Page 32
iv. Describe the luggage cart's features on design, engineering, safety, and support. What are the luggage cart restrictions, manufacturer's recommendations in writing on the size and weight limits. What is the luggage cart finish and the manufacturing process.	Y	Page 33
v. Describe how the CMUs operation is handled for passengers renting and returning carts. Do units accept coins, currency and/or credit cards? What are the change making capacities for the CMUs? Describe how the signage (instructions) on the CMUs are communicated to customers.	Y	Page 34
vi. Provide a detailed plan describing the collection frequency and restocking of the carts. Describe the equipment to be used for moving the carts in each of the operating areas.	Y	Pages 34 & 35

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<b>E-MAIL ADDRESS:</b>	multerm@smartecarte.com

PROPOSAL DOCUMENTS	WAS THE INFORMATION/DOCUMENTS PROVIDED?	NOTES
<b>G. MANAGING, INSTALLING, OPERATING, AND MAINTAINING PLAN</b> Please submit a plan for meeting the requirements for MIA's patrons for luggage cart services: 1. What is your customer service philosophy and goals, and how will they be implemented into action? Discuss CMU servicing and cart replenishment, policies regarding refunds, and any other customer service issues. How will you repair and replace carts?	<b>Y</b>	See tab Managing, Installing, Operating, and Maintaining Plan Page 36
2. How will the Proposer begin its operations, minimizing disruption of service to the public?	<b>Y</b>	Page 36
3. Attach a plan for retrieving carts that may become an exhibit to Luggage Cart Lease and Concession Agreement should you be the selected Proposer.	<b>Y</b>	Pages 36 thru 44
4. Describe in detail how you will operate the Concession, including your prices; manner and frequency of collections; your procedure for handling emergency calls; and the number, type, make, and description of the luggage cart equipment and money changers to be used (note that only new or like new equipment will be permitted and the dispensing equipment may be battery or electronically operated.)	<b>Y</b>	See Page 44 and tab Equipment, Design & Features, Items 1 & 2
5. What internal controls and accounting methods will you use.	<b>Y</b>	Pages 44 thru 46
6. Describe in detail the cost of all luggage cart equipment and money changers and the cost of installation for this concession.	<b>Y</b>	Page 46
7. Discuss operating, cart cleaning and maintenance schedules.	<b>Y</b>	Pages 46 thru 49
8. Describe in detail the customer service philosophy, including treatment of complaints, refunds and adjustments.	<b>Y</b>	Page 49

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<b>E-MAIL ADDRESS:</b>	multerm@smartecarte.com

PROPOSAL DOCUMENTS	WAS THE INFORMATION/D OCUMENTS PROVIDED?	NOTES
9. Describe the management policies, structure and operating program (including staffing plan and organization chart) to be used in the operation of the Concession. Identify staffing to be maintained in both low and peak passenger arrivals and departure periods. Prepare and submit a chart of the organization structure proposed in this Concession. Describe the relationship of the Proposer's local operating staff to the headquarters operating structure. Please submit charts, diagrams and descriptive materials as necessary.	Y	Pages 50 thru 52
10. Describe the personnel policies, incentive programs, detailed training (as well as recurring training) for all positions.	Y	Pages 52 & 53
11. The Proposer shall demonstrate that its proposed management personnel are qualified to handle the duties and responsibilities of a luggage cart concession at the Airport. Identify the supervisory personnel who will be available for the operation of the concession. Identify the financial management staff that will be responsible for the financial requirements (i.e. reports) of the contract.	Y	Pages 50 & 54
12. Provide the name, address, and a complete resume of the qualifications and experience of the proposed general manager. Provide describe the services that he/she has provided with the Proposer. The resume shall identify references were the proposed general manager has served in the last five (5) years. These references should identify the employee who monitored or otherwise worked in close contact with the proposed general manager. If a general manager has not been identified, provide the qualifications and experience required for the general manager position. The Aviation Director of the Aviation Department or his designee will review and approve the qualifications and experience required for the general manager position. The Aviation Director or designee may require that the candidate appear for a personal interview.	Y	Page 54 and Exhibit 14

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PROPOSAL DOCUMENTS	WAS THE INFORMATION/DOCUMENTS PROVIDED?	NOTES
13. Describe the uniform the employees will be wearing during the summer and winter operations.	Y	See Page 55 and Exhibit 15
<b>H. ACDBE PLAN/PARTICIPATION</b> The County has established an ACDBE concession specific goal of <b>20%</b> percent of gross revenues. The ACDBE overall goal can be achieved either through the Proposer being an ACDBE itself, a partnership or joint venture, or subcontracting a percentage of gross revenues. The Airport Concession Disadvantaged Business Enterprise (ACDBE) Plan must be submitted with the Proposal in accordance with <b>Appendix C, Section II</b> and its supporting documents. The Successful Proposer will be required to submit to the Department's Minority Affairs Division, Monthly Utilization Reports (MUR) reflecting ACDBE revenue and operational expenses, commencing 90 days after beneficial occupancy and monthly thereafter, on or before the 10 <sup>th</sup> of every month.	Y	ACDBE 23%
Proposal Bond Guaranty \$5,000	Y	
Schedule of Participation	Y	
Letter of Intent	Y	

<b>REQUEST FOR PROPOSAL</b> <b>LUGGAGE CART CONCESSION PROGRAM</b> <b>AT MIAMI INTERNATIONAL AIRPORT</b> <b>RFP MDAD-08-05</b>	<b>CONTRACT MEASURES:</b> <b>ACDBE 20%</b>
<b>INVENTORY OF SUBMITTED PROPOSALS</b>	<b>RFP DUE DATE: September 8, 2006</b> <b>PAGE 1 of 9</b>

**NAME OF PROPOSER:** bagport America LLC  
**ADDRESS:** 3663 SW 8 Street, Suite 200, Miami, FL 33135  
**TELEPHONE/FAX NUMBERS:** +4940-8662-4729 / +4940-8662-6246  
**E-MAIL ADDRESS:** sven.s@bagport.com

PROPOSAL DOCUMENTS	WAS THE INFORMATION/ DOCUMENTS PROVIDED?	NOTES
Minimum Qualification and Technical Proposal Form (Questionnaire Form) (Appendix A)	Y	See Page 13 above Item # 9
<b>MINIMUM QUALIFICATIONS</b>		
<p>Proposers shall supply evidence that they meet the minimum qualifications established for this RFP as follows:</p> <p>Three (3) years continuous experience within the last five (5) years in the direct management, installation and operation of a business in an airport, other transportation center, or shopping mall venues. This experience must have included an operation that can demonstrate customer service related experience, dealing directly with the public and generating at least \$500,000 in annual sales. If Proposer is a joint enture, then at least one of the joint venture partners must satisfy all of the foregoing Minimum Qualification Requirements. If the proposer is a New Entity other than a Joint Venture then the managing or principal member or other person listed in 8, b of Appendix A must satisfy all of the foregoing minimum qualifications requirements.</p>	Y	See tabs A, B, and C and Appendix A
<b>Condition of Award</b> - Must be authorized to do business in the State of Florida	Y	See Page 131
<b>Percentage B Form (Appendix B)</b>	Y	
<b>Airport Concession Disadvantaged Business Enterprises Participation Plan/Provision (Appendix C)</b>	Y	See Tab J
<b>Acknowledgement of Addenda (Appendix D)</b>	Y	
<b>Proposal Bond Guaranty (Appendix E)</b>	Y	Check received
<b>Lobbyist Registration for Oral Presentations (Appendix F)</b>	Y	See Tab M
<b>Local Business Preference (Appendix I)</b>	Y	See Tab N
<b>Single Execution Affidavits and Condition of Award Certificates (Appendix J)</b>	Y	See Tab O

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PROPOSAL DOCUMENTS	WAS THE INFORMATION/DOCUMENTS PROVIDED?	NOTES
Affidavit for Public Entity Crimes	Y	Note: See AFF-3
Affidavit for Debarment Disclosure	Y	
Affidavit for Criminal Record	Y	
Affidavit for Disclosure of Ownership	Y	
Affidavit for Affirmative Action Plan	Y	
<b>Condition of Award Affidavits</b>	Y	
Disability Nondiscrimination	Y	
Family Leave	Y	
Domestic Leave	Y	
Currently due Fees and Taxes	Y	
Drug Free Work Place	Y	
Current in County Obligations	Y	
Code of Business Ethics	Y	
<b>A. TABLE OF CONTENTS</b> The table of Contents should outline the major areas of the proposal in sequential order. All pages of the Proposal, including the enclosures, must be clearly and consecutively numbered and correspond to the Table of Contents. A Proposer's checklist should list all requested information and the associated page number in the Minimum Qualifications Form and Technical Proposal. If additional information is provided as part of or in support of the Proposal, this information should be referenced here also.	Y	See Tab A
<b>B. EXECUTIVE SUMMARY</b> Provide a brief summary describing the Proposer's ability to perform the Work requested in this RFP; a history of the Proposer's background and experience in providing similar services; the qualifications of the Proposer's personnel to be assigned to this project and a brief history of their background and experience; and, any other information called for by this RFP which the Proposer deems relevant. This summary should be brief and concise to advise the reader of the basic services offered, and the experience and qualifications of the Proposer and staff. The executive summary should be no longer than three (3) pages.	Y	See Tab B

**REQUEST FOR PROPOSAL  
LUGGAGE CART CONCESSION PROGRAM  
AT MIAMI INTERNATIONAL AIRPORT  
RFP MDAD-08-05**

**CONTRACT MEASURES:  
ACDBE 20%**

**INVENTORY OF SUBMITTED PROPOSALS**

**RFP DUE DATE: September 8, 2006  
PAGE 3 of 9**

**NAME OF PROPOSER:** bagport America LLC  
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PROPOSAL DOCUMENTS	WAS THE INFORMATION/DOCUMENTS PROVIDED?	NOTES
<b>C. MINIMUM QUALIFICATIONS FORM</b> <p>The "Minimum Qualifications Form", Appendix A - Part 1 should be fully completed, signed, and notarized as required. A Minimum Qualifications Form submitted which does not include necessary information may be deemed non-responsive and may not be considered for award of any Agreement; such failure to submit Appendix A "Minimum Qualifications Form" shall render the Proposal non-responsive.</p>	Y	See Tab C
<b>D. FINANCIAL CAPACITY TO PERFORM/FINANCING</b> <p>The Proposer shall provide copies of certified financial statements (last two fiscal years - which include a balance sheet and income statements) prepared in accordance with generally accepted accounting principals (GAAP) for the Proposer and any individual companies comprising a team or joint venture that are signatories to the guaranteed payment of the MAG and Fee. If certified financial statements are not available, the Proposer may submit its complete federal tax return and a copy of its most recent financial statements for the last two years. Proposer shall describe the financial relationship and responsibilities with regard to any joint ventures, subsidiaries or related companies.</p> <p>All Proposers must provide information on the percentage of equity of any partnerships formed and an estimate of working capital and reserves. Equity shares should be specified on the form and on additional sheets, if necessary. Proposers should specify the source of funds (cash, bank loan, etc.) for the start-up costs.</p>	Y	See Tab D - Pages 20 & 21
<p>1. <b>Capital Investment:</b> Proposer shall submit a financial plan, which will indicate the source of funding to be used for capital requirements, and the amount of working capital the Proposer determines will be required to maintain operations (submit a pro forma statement of projected results of operation for a two-year period - Do not include any information on Payment made to the Department in the pro forma).</p>	Y	See Tab D- Page 21

<b>REQUEST FOR PROPOSAL</b> <b>LUGGAGE CART CONCESSION PROGRAM</b> <b>AT MIAMI INTERNATIONAL AIRPORT</b> <b>RFP MDAD-08-05</b>	<b>CONTRACT MEASURES:</b> <b>ACDBE 20%</b>
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PROPOSAL DOCUMENTS	WAS THE INFORMATION/DOCUMENTS PROVIDED?	NOTES
<b>2. References:</b> The Proposer must list three letters of business reference and contact information for the authors of those letters (to allow the Department to verify this information).	Y	See Tab E – Pages 46 thru 49
<b>3. Financial Background Information:</b> The Proposer shall include an interim balance sheet and income statement reflecting the Proposer's current financial conditions and any significant financial events occurring subsequent to the closing date of the most recent certified financial statements or Federal Tax Returns as required in first paragraph of this sub section "D".	Y	See Tab D
<b>4. Requested Information from Subsidiaries:</b> If Proposer operates as a subsidiary of another company, include the appropriate financial information as requested above for both the parent and subsidiary. If parent company guarantees the MAG, fees and the Lease and Concession Agreement for the Proposer, provide a letter from an authorized representative of the parent company attesting to the parent company's intent to guarantee the MAG, fees and Lease and Concession Agreement.	Y	See Tab D
<b>5. Financial Capacity:</b> Submit a proposed operating budget (pro forma) statement of projected results of the operation for a two year period (do not include any Payments made to the Department).	Y	See Tab D
<b>E. EXPERIENCE AND QUALIFICATIONS</b> Proposer shall explain in detail the number of years and extent of Proposer's industry experience, with special emphasis upon prior experience with the management and operation of luggage cart operations at airports, transportation centers, shopping centers, or marketplaces. Proposer must also provide details on the pertinent experience of persons who will be directly involved in the management and operations of the Luggage Cart Operation as follows:	Y	See Tab E

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PROPOSAL DOCUMENTS	WAS THE INFORMATION/DOCUMENTS PROVIDED?	NOTES
1. Provide the names and addresses of the luggage cart contracts (up to ten) which the Proposer currently operates and/or manages or has operated/managed in the last five years at other airports, shopping centers, or other locations where luggage cart rental systems are similar to airport systems, and the number of years the Proposer has operated at each primary location. Include the number of carts, CMUs locations, rental rate and annual sales in each market. Include any general aeronautical contracts that the Proposer has managed/operated or manages/operates, in the past five years.	Y	See Tab E
2. The location, address, phone number, and person to contact at the Proposer's most comparable location. Include photographs with a descriptive outline of the most comparable location and approximate gross receipts for the most recent fiscal year. Provide the number of CMUs and the number of luggage carts and specify the term of the contract.	Y	See Tab E
3. Explain how the Proposer's experience and qualifications qualify the Proposer to develop and operate a luggage cart concession. Provide the name, location, and date of any of the Proposer's luggage cart contracts which have been terminated and reason for termination prior to the expiration of their term, within the past five (5) years.	Y	See Tab E
<b>F. EQUIPMENT DESIGN AND FUNCTION</b>		
1. <b>Equipment Submittals</b>	Y	See Tab F
i. Describe the features that make your equipment the best for MIA. How are the safety and utility maximized in these features?		
ii. Describe how the Luggage Carts, the CMUs and the proposed signage to be affixed to the CMUs meet the requirements of Section I, IV of this RFP. The Department, may require the Proposer to demonstrate the equipment at an oral presentation.	Y	See Tab F

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PROPOSAL DOCUMENTS	WAS THE INFORMATION/DOCUMENTS PROVIDED?	NOTES
A color photo of the proposed luggage cart, the CMUs equipment, and the sample of the CMUs signage to be affixed to the CMUs.	Y	See Tab F
2. <b>Luggage Cart and Cart Management Units (CMUs) Specifications</b>		
i. Provide a complete specification from the manufacturer including dimensions and materials used for CMUs units and luggage carts, including the construction of the wheels, the frame, cart handles, fasteners and support equipment. Provide name and address of manufacturer of CMUs and carts.	Y	See Tab F
ii. Specify the CMUs unit power requirements and capacities.	Y	See Tab F
iii. Specify the reliability of the proposed CMUs, and Proposer's general experience with this equipment at other similar locations and the number of years the equipment has been in place overall.	Y	See Tab F
iv. Describe the luggage cart's features on design, engineering, safety, and support. What are the luggage cart restrictions, manufacturer's recommendations in writing on the size and weight limits. What is the luggage cart finish and the manufacturing process.	Y	See Tab F
v. Describe how the CMUs operation is handled for passengers renting and returning carts. Do units accept coins, currency and/or credit cards? What are the change making capacities for the CMUs? Describe how the signage (instructions) on the CMUs are communicated to customers.	Y	See Tab F
vi. Provide a detailed plan describing the collection frequency and restocking of the carts. Describe the equipment to be used for moving the carts in each of the operating areas.	Y	See Tab F

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PROPOSAL DOCUMENTS	WAS THE INFORMATION/DOCUMENTS PROVIDED?	NOTES
<b>G. MANAGING, INSTALLING, OPERATING, AND MAINTAINING PLAN</b> Please submit a plan for meeting the requirements for MIA's patrons for luggage cart services:	Y	See Tab G – Page 68
1. What is your customer service philosophy and goals, and how will they be implemented into action? Discuss CMU servicing and cart replenishment, policies regarding refunds, and any other customer service issues. How will you repair and replace carts?		
2. How will the Proposer begin its operations, minimizing disruption of service to the public?	Y	See Tab G – Page 69
3. Attach a plan for retrieving carts that may become an exhibit to Luggage Cart Lease and Concession Agreement should you be the selected Proposer.	Y	See Tab G
4. Describe in detail how you will operate the Concession, including your prices; manner and frequency of collections; your procedure for handling emergency calls; and the number, type, make, and description of the luggage cart equipment and money changers to be used (note that only new or like new equipment will be permitted and the dispensing equipment may be battery or electronically operated.)	Y	See Tab G
5. What internal controls and accounting methods will you use.	Y	See Tab G
6. Describe in detail the cost of all luggage cart equipment and money changers and the cost of installation for this concession.	Y	See Tab G
7. Discuss operating, cart cleaning and maintenance schedules.	Y	See Tab G
8. Describe in detail the customer service philosophy, including treatment of complaints, refunds and adjustments.	Y	See Tab G

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9. Describe the management policies, structure and operating program (including staffing plan and organization chart) to be used in the operation of the Concession. Identify staffing to be maintained in both low and peak passenger arrivals and departure periods. Prepare and submit a chart of the organization structure proposed in this Concession. Describe the relationship of the Proposer's local operating staff to the headquarters operating structure. Please submit charts, diagrams and descriptive materials as necessary.	Y	See Tab G – Pages 74 & 75
10. Describe the personnel policies, incentive programs, detailed training (as well as recurring training) for all positions.	Y	See Tab G – Page 80
11. The Proposer shall demonstrate that its proposed management personnel are qualified to handle the duties and responsibilities of a luggage cart concession at the Airport. Identify the supervisory personnel who will be available for the operation of the concession. Identify the financial management staff that will be responsible for the financial requirements (i.e. reports) of the contract.	Y	See Chart, page 75 and Page 79
12. Provide the name, address, and a complete resume of the qualifications and experience of the proposed general manager. Provide describe the services that he/she has provided with the Proposer. The resume shall identify references were the proposed general manager has served in the last five (5) years. These references should identify the employee who monitored or otherwise worked in close contact with the proposed general manager. If a general manager has not been identified, provide the qualifications and experience required for the general manager position. The Aviation Director of the Aviation Department or his designee will review and approve the qualifications and experience required for the general manager position. The Aviation Director or designee may require that the candidate appear for a personal interview.	Y	Missing Resume of proposed General Manager

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13. Describe the uniform the employees will be wearing during the summer and winter operations.	Y	See Page 85
<b>H. ACDBE PLAN/PARTICIPATION</b> The County has established an ACDBE concession specific goal of 20% percent of gross revenues. The ACDBE overall goal can be achieved either through the Proposer being an ACDBE itself, a partnership or joint venture, or subcontracting a percentage of gross revenues. The Airport Concession Disadvantaged Business Enterprise (ACDBE) Plan must be submitted with the Proposal in accordance with <b>Appendix C, Section II</b> and its supporting documents. The Successful Proposer will be required to submit to the Department's Minority Affairs Division, Monthly Utilization Reports (MUR) reflecting ACDBE revenue and operational expenses, commencing 90 days after beneficial occupancy and monthly thereafter, on or before the 10 <sup>th</sup> of every month.	Y	ACDBE 25%
Proposal Bond Guaranty \$5,000	Y	
Schedule of Participation	Y	
Letter of Intent	Y	

**Note.** Corporation, New Entity, and Subsidiary  
Articles of Organization Pages 17 thru 19

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**TELEPHONE/FAX NUMBERS:** 407-825-3230 / 407-825-3231  
**E-MAIL ADDRESS:** TopCartOrlando@aol.com or TOPCART@aol.com

PROPOSAL DOCUMENTS	WAS THE INFORMATION/ DOCUMENTS PROVIDED?	NOTES
Minimum Qualification and Technical Proposal Form (Questionnaire Form) (Appendix A)	Y	
<b>MINIMUM QUALIFICATIONS</b> Proposers shall supply evidence that they meet the minimum qualifications established for this RFP as follows: Three (3) years continuous experience within the last five (5) years in the direct management, installation and operation of a business in an airport, other transportation center, or shopping mall venues. This experience must have included an operation that can demonstrate customer service related experience, dealing directly with the public and generating at least \$500,000 in annual sales. If Proposer is a joint venture, then at least one of the joint venture partners must satisfy all of the foregoing Minimum Qualification Requirements. If the proposer is a New Entity other than a Joint Venture then the managing or principal member or other person listed in 8, b of Appendix A must satisfy all of the foregoing minimum qualifications requirements.	Y	See Section 2 and Appendix A
Condition of Award - Must be authorized to do business in the State of Florida	N	
Percentage B Form (Appendix B)	Y	
Airport Concession Disadvantaged Business Enterprises Participation Plan/Provision (Appendix C)	Y	
Acknowledgement of Addenda (Appendix D)	Y	
Proposal Bond Guaranty (Appendix E)	Y	Check received
Lobbyist Registration for Oral Presentations (Appendix F)	Y	
Local Business Preference (Appendix I)	N/A	Not local
Single Execution Affidavits and Condition of Award Certificates (Appendix J)	Y	

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Affidavit for Criminal Record	Y	See Appendix J
Affidavit for Disclosure of Ownership	Y	See Appendix J
Affidavit for Affirmative Action Plan	Y	See Appendix J
<b>Condition of Award Affidavits</b>	Y	See Appendix J
Disability Nondiscrimination	Y	See Appendix J
Family Leave	Y	See Appendix J
Domestic Leave	Y	See Appendix J
Currently due Fees and Taxes	Y	See Appendix J
Drug Free Work Place	Y	See Appendix J
Current in County Obligations	Y	See Appendix J
Code of Business Ethics	Y	See Appendix J
<b>A. TABLE OF CONTENTS</b> The Table of Contents should outline the major areas of the proposal in sequential order. All pages of the Proposal, including the enclosures, must be clearly and consecutively numbered and correspond to the Table of Contents. A Proposer's checklist should list all requested information and the associated page number in the Minimum Qualifications Form and Technical Proposal. If additional information is provided as part of or in support of the Proposal, this information should be referenced here also.	Y	See Section 1
<b>B. EXECUTIVE SUMMARY</b> Provide a brief summary describing the Proposer's ability to perform the Work requested in this RFP; a history of the Proposer's background and experience in providing similar services; the qualifications of the Proposer's personnel to be assigned to this project and a brief history of their background and experience; and, any other information called for by this RFP which the Proposer deems relevant. This summary should be brief and concise to advise the reader of the basic services offered, and the experience and qualifications of the Proposer and staff. The executive summary should be no longer than three (3) pages.	Y	See Section 1

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<b>C. MINIMUM QUALIFICATIONS FORM</b> <p>The "Minimum Qualifications Form", Appendix A – Part 1 should be fully completed, signed, and notarized as required. A Minimum Qualifications Form submitted which does not include necessary information may be deemed non-responsive and may not be considered for award of any Agreement; such failure to submit Appendix A "Minimum Qualifications Form" shall render the Proposal non-responsive.</p>	<b>Y</b>	See Section 2 and Appendix A
<b>D. FINANCIAL CAPACITY TO PERFORM/FINANCING</b> <p>The Proposer shall provide copies of certified financial statements (last two fiscal years - which include a balance sheet and income statements) prepared in accordance with generally accepted accounting principals (GAAP) for the Proposer and any individual companies comprising a team or joint venture that are signatories to the guaranteed payment of the MAG and Fee. If certified financial statements are not available, the Proposer may submit its complete federal tax return and a copy of its most recent financial statements for the last two years. Proposer shall describe the financial relationship and responsibilities with regard to any joint ventures, subsidiaries or related companies.</p> <p>All Proposers must provide information on the percentage of equity of any partnerships formed and an estimate of working capital and reserves. Equity shares should be specified on the form and on additional sheets, if necessary. Proposers should specify the source of funds (cash, bank loan, etc.) for the start-up costs.</p>	<b>Y</b>	See Appendices K5 & K6
<p>1. <b>Capital Investment:</b> Proposer shall submit a financial plan, which will indicate the source of funding to be used for capital requirements, and the amount of working capital the Proposer determines will be required to maintain operations (submit a pro forma statement of projected results of operation for a two-year period – Do not include any information on Payment made to the Department in the pro forma).</p>	<b>Y</b>	See Section 3

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2. <b>References:</b> The Proposer must list three letters of business reference and contact information for the authors of those letters (to allow the Department to verify this information).	Y	See Section 4
3. <b>Financial Background Information:</b> The Proposer shall include an interim balance sheet and income statement reflecting the Proposer's current financial conditions and any significant financial events occurring subsequent to the closing date of the most recent certified financial statements or Federal Tax Returns as required in first paragraph of this sub section "D".	Y	See Section 3 The Proposer has not formed any partnerships and therefore does not have any equity shares.
4. <b>Requested Information from Subsidiaries:</b> If Proposer operates as a subsidiary of another company, include the appropriate financial information as requested above for both the parent and subsidiary. If parent company guarantees the MAG, fees and the Lease and Concession Agreement for the Proposer, provide a letter from an authorized representative of the parent company attesting to the parent company's intent to guarantee the MAG, fees and Lease and Concession Agreement.	N/A	
5. <b>Financial Capacity:</b> Submit a proposed operating budget (pro forma) statement of projected results of the operation for a two year period (do not include any Payments made to the Department).	Y	See Section 3
<b>E. EXPERIENCE AND QUALIFICATIONS</b>  Proposer shall explain in detail the number of years and extent of Proposer's industry experience, with special emphasis upon prior experience with the management and operation of luggage cart operations at airports, transportation centers, shopping centers, or marketplaces. Proposer must also provide details on the pertinent experience of persons who will be directly involved in the management and operations of the Luggage Cart Operation as follows:	Y	See Section 4

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2. The location, address, phone number, and person to contact at the Proposer's most comparable location. Include photographs with a descriptive outline of the most comparable location and approximate gross receipts for the most recent fiscal year. Provide the number of CMUs and the number of luggage carts and specify the term of the contract.	Y	See Section 4 – Photographs in Section 5
3. Explain how the Proposer's experience and qualifications qualify the Proposer to develop and operate a luggage cart concession. Provide the name, location, and date of any of the Proposer's luggage cart contracts which have been terminated and reason for termination prior to the expiration of their term, within the past five (5) years.	Y	See Section 5
<b>F. EQUIPMENT DESIGN AND FUNCTION</b>		
1. <b>Equipment Submittals</b>		
i. Describe the features that make your equipment the best for MIA. How are the safety and utility maximized in these features?	Y	See Section 5
ii. Describe how the Luggage Carts, the CMUs and the proposed signage to be affixed to the CMUs meet the requirements of Section I, IV of this RFP. The Department, may require the Proposer to demonstrate the equipment at an oral presentation.	Y	See Section 5

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i. Provide a complete specification from the manufacturer including dimensions and materials used for CMUs units and luggage carts, including the construction of the wheels, the frame, cart handles, fasteners and support equipment. Provide name and address of manufacturer of CMUs and carts.	<b>Y</b>	See Section 5
ii. Specify the CMUs unit power requirements and capacities.	<b>Y</b>	See Section 5
iii. Specify the reliability of the proposed CMUs, and Proposer's general experience with this equipment at other similar locations and the number of years the equipment has been in place overall.	<b>Y</b>	See Section 5
iv. Describe the luggage cart's features on design, engineering, safety, and support. What are the luggage cart restrictions, manufacturer's recommendations in writing on the size and weight limits. What is the luggage cart finish and the manufacturing process.	<b>Y</b>	See Section 5
v. Describe how the CMUs operation is handled for passengers renting and returning carts. Do units accept coins, currency and/or credit cards? What are the change making capacities for the CMUs? Describe how the signage (instructions) on the CMUs are communicated to customers.	<b>Y</b>	See Section 5
vi. Provide a detailed plan describing the collection frequency and restocking of the carts. Describe the equipment to be used for moving the carts in each of the operating areas.	<b>Y</b>	See Section 5

**REQUEST FOR PROPOSAL  
LUGGAGE CART CONCESSION PROGRAM  
AT MIAMI INTERNATIONAL AIRPORT  
RFP MDAD-08-05**

**CONTRACT MEASURES:  
ACDBE 20%**

**INVENTORY OF SUBMITTED PROPOSALS**

**RFP DUE DATE: September 8, 2006  
PAGE 7 of 9**

**NAME OF PROPOSER:** TopCart, LLC  
**ADDRESS:** 9200 A Airport Blvd., Orlando Intl. Airport, Orlando, FL 32827  
**TELEPHONE/FAX NUMBERS:** 407-825-3230 / 407-825-3231  
**E-MAIL ADDRESS:** TopCartOrlando@aol.com or TOPCART@aol.com

PROPOSAL DOCUMENTS	WAS THE INFORMATION/DOCUMENTS PROVIDED?	NOTES
<b>G. MANAGING, INSTALLING, OPERATING, AND MAINTAINING PLAN</b> Please submit a plan for meeting the requirements for MIA's patrons for luggage cart services: 1. What is your customer service philosophy and goals, and how will they be implemented into action? Discuss CMU servicing and cart replenishment, policies regarding refunds, and any other customer service issues. How will you repair and replace carts?	<b>Y</b>	See Section 6
2. How will the Proposer begin its operations, minimizing disruption of service to the public?	<b>Y</b>	See Section 6 (5)
3. Attach a plan for retrieving carts that may become an exhibit to Luggage Cart Lease and Concession Agreement should you be the selected Proposer.	<b>Y</b>	See Section 6, 6.2.2. (3)
4. Describe in detail how you will operate the Concession, including your prices; manner and frequency of collections; your procedure for handling emergency calls; and the number, type, make, and description of the luggage cart equipment and money changers to be used (note that only new or like new equipment will be permitted and the dispensing equipment may be battery or electronically operated.)	<b>Y</b>	See Section 6, 6.2.2 (3), (4), (5) and (9)
5. What internal controls and accounting methods will you use.	<b>Y</b>	See Section 6, 6.2.2. (5)
6. Describe in detail the cost of all luggage cart equipment and money changers and the cost of installation for this concession.	<b>Y</b>	See Section 6, 6.2.2. (3) and (4)
7. Discuss operating, cart cleaning and maintenance schedules.	<b>Y</b>	See Section 6.2.2. (7)
8. Describe in detail the customer service philosophy, including treatment of complaints, refunds and adjustments.	<b>Y</b>	See Section 6, 6.2.2. (1)

**REQUEST FOR PROPOSAL  
LUGGAGE CART CONCESSION PROGRAM  
AT MIAMI INTERNATIONAL AIRPORT  
RFP MDAD-08-05**

**CONTRACT MEASURES:  
ACDBE 20%**

**INVENTORY OF SUBMITTED PROPOSALS**

**RFP DUE DATE: September 8, 2006  
PAGE 8 of 9**

**NAME OF PROPOSER:** TopCart, LLC  
**ADDRESS:** 9200 A Airport Blvd., Orlando Intl. Airport, Orlando, FL 32827  
**TELEPHONE/FAX NUMBERS:** 407-825-3230 / 407-825-3231  
**E-MAIL ADDRESS:** TopCartOrlando@aol.com or TOPCART@aol.com

PROPOSAL DOCUMENTS	WAS THE INFORMATION/DOCUMENTS PROVIDED?	NOTES
9. Describe the management policies, structure and operating program (including staffing plan and organization chart) to be used in the operation of the Concession. Identify staffing to be maintained in both low and peak passenger arrivals and departure periods. Prepare and submit a chart of the organization structure proposed in this Concession. Describe the relationship of the Proposer's local operating staff to the headquarters operating structure. Please submit charts, diagrams and descriptive materials as necessary.	Y	See Section 6 (9)
10. Describe the personnel policies, incentive programs, detailed training (as well as recurring training) for all positions.	Y	See Section 6 (10)
11. The Proposer shall demonstrate that its proposed management personnel are qualified to handle the duties and responsibilities of a luggage cart concession at the Airport. Identify the supervisory personnel who will be available for the operation of the concession. Identify the financial management staff that will be responsible for the financial requirements (i.e. reports) of the contract.	Y	See Section 6 (11)
12. Provide the name, address, and a complete resume of the qualifications and experience of the proposed general manager. Provide describe the services that he/she has provided with the Proposer. The resume shall identify references were the proposed general manager has served in the last five (5) years. These references should identify the employee who monitored or otherwise worked in close contact with the proposed general manager. If a general manager has not been identified, provide the qualifications and experience required for the general manager position. The Aviation Director of the Aviation Department or his designee will review and approve the qualifications and experience required for the general manager position. The Aviation Director or designee may require that the candidate appear for a personal interview.	Y	See Section 6 (12) and Appendix 19

**REQUEST FOR PROPOSAL  
LUGGAGE CART CONCESSION PROGRAM  
AT MIAMI INTERNATIONAL AIRPORT  
RFP MDAD-08-05**

**CONTRACT MEASURES:  
ACDBE 20%**

**INVENTORY OF SUBMITTED PROPOSALS**

**RFP DUE DATE: September 8, 2006  
PAGE 9 of 9**

**NAME OF PROPOSER:** TopCart, LLC  
**ADDRESS:** 9200 A Airport Blvd., Orlando Intl. Airport, Orlando, FL 32827  
**TELEPHONE/FAX NUMBERS:** 407-825-3230 / 407-825-3231  
**E-MAIL ADDRESS:** TopCartOrlando@aol.com or TOPCART@aol.com

PROPOSAL DOCUMENTS	WAS THE INFORMATION/DOCUMENTS PROVIDED?	NOTES
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13. Describe the uniform the employees will be wearing during the summer and winter operations.	<b>Y</b>	See Section 6 (13)
<b>H. ACDBE PLAN/PARTICIPATION</b> The County has established an ACDBE concession specific goal of 20% percent of gross revenues. The ACDBE overall goal can be achieved either through the Proposer being an ACDBE itself, a partnership or joint venture, or subcontracting a percentage of gross revenues. The Airport Concession Disadvantaged Business Enterprise (ACDBE) Plan must be submitted with the Proposal in accordance with <b>Appendix C, Section II</b> and its supporting documents. The Successful Proposer will be required to submit to the Department's Minority Affairs Division, Monthly Utilization Reports (MUR) reflecting ACDBE revenue and operational expenses, commencing 90 days after beneficial occupancy and monthly thereafter, on or before the 10 <sup>th</sup> of every month.	<b>Y</b>	ACDBE 20%
Proposal Bond Guaranty \$5,000	<b>Y</b>	
Schedule of Participation	<b>Y</b>	
Letter of Intent	<b>Y</b>	

**Note:** Corporation. See K-1 thru K-21 Articles of Organization

**REQUEST FOR PROPOSALS  
LUGGAGE CART CONCESSION PROGRAM AT MIA  
RFP-MDAD-08-05  
Smarte Carte, Inc.**

**Requirement**

**Y/N**

**Notes**

**Required Proposal Documents**

The Proposer shall provide copies of certified financial statements (last two fiscal years) prepared in accordance with generally accept accounting principles for Proposer and any. . . . Signatories to the guaranteed payment of the MAG and FEE. If certified financial statements are not available, the Proposer may submit its complete federal tax return and a copy of its most recent financial statements for the last two years.

Yes. Audited financials for 2003, 2004, and 2005.

All Proposers must provide information on the percentage of equity of any partnerships formed and an estimate of working capital and reserves.

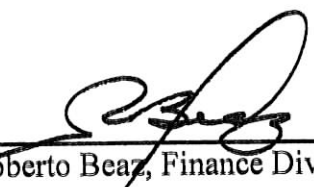
N/A.

Proposers should specify the source of funds for the start-up costs.

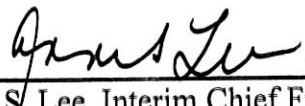
Yes. Parent company.

Proposer shall include an interim balance sheet and income statement reflecting the Proposer's current financial conditions and any significant financial events occurring subsequent to the closing date of the most recent certified financial staements or federal tax returns. . . .

Yes. Through June 30, 2006.

  
\_\_\_\_\_  
Roberto Beaz, Finance Division

11-13-06  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Anne S. Lee, Interim Chief Financial Officer

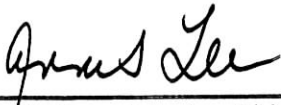
11-13-06  
\_\_\_\_\_  
Date

**REQUEST FOR PROPOSALS**  
**LUGGAGE CART CONCESSION PROGRAM AT MIA**  
**RFP-MDAD-08-05**  
**bagport America LLC**

<u>Requirement</u>	<u>Y/N</u>	<u>Notes</u>
<b>Required Proposal Documents</b>		
The Proposer shall provide copies of certified financial statements (last two fiscal years) prepared in accordance with generally accept accounting principles for Proposer and any. . . . Signatories to the guaranteed payment of the MAG and FEE. If certified financial statements are not available, the Proposer may submit its complete federal tax return and a copy of its most recent financial statements for the last two years.	Yes.	Proposing company is newly formed. Parent company and Swedish affiliate financial statements are audited.
All Proposers must provide information on the percentage of equity of any partnerships formed and an estimate of working capital and reserves.	N/A.	
Proposers should specify the source of funds for the start-up costs.	Yes.	Bank reference letter.
Proposer shall include an interim balance sheet and income statement reflecting the Proposer's current financial conditions and any significant financial events occurring subsequent to the closing date of the most recent certified financial staements or federal tax returns. . . .	Yes.	Audited statements through 2006.

  
\_\_\_\_\_  
Roberto Beaz, Finance Division

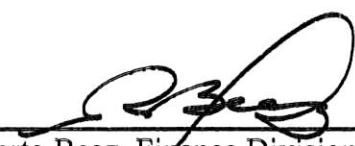
11-13-06  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Anne S. Lee, Interim Chief Financial Officer

11-13-06  
\_\_\_\_\_  
Date

**REQUEST FOR PROPOSALS  
LUGGAGE CART CONCESSION PROGRAM AT MIA  
RFP-MDAD-08-05  
Top Cart**

<u><i>Requirement</i></u>	<u><i>Y/N</i></u>	<u><i>Notes</i></u>
<b>Required Proposal Documents</b>		
The Proposer shall provide copies of certified financial statements (last two fiscal years) prepared in accordance with generally accept accounting principles for Proposer and any. . . . Signatories to the guaranteed payment of the MAG and FEE. If certified financial statements are not available, the Proposer may submit its complete federal tax return and a copy of its most recent financial statements for the last two years.	No.	Compiled (not audited) statements for Top Cart Orlando LLC for the years ended December 31, 2004 and 2005. Tax return for 2005 for Top Cart Orlando LLC included. Parent company statements, unaudited, are also included.
All Proposers must provide information on the percentage of equity of any partnerships formed and an estimate of working capital and reserves.	Yes.	Parent only. N/A for Proposer.
Proposers should specify the source of funds for the start-up costs.	Yes.	Cash flow and commercial loans.
Proposer shall include an interim balance sheet and income statement reflecting the Proposer's current financial conditions and any significant financial events occurring subsequent to the closing date of the most recent certified financial staements or federal tax returns. . . .	No.	

  
\_\_\_\_\_  
Roberto Beaz, Finance Division

11-13-06  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Anne S. Lee, Interim Chief Financial Officer

11-13-06  
\_\_\_\_\_  
Date

# Memorandum

MIAMI-DADE  
COUNTY

Date: October 31, 2006

06 NOV -2 PM 3: 55

To: AnaMaria Saks  
Sr. Procurement Contracts Officer  
Contracts Administration Division

From:   
Howard Gregory  
Acting Associate Director  
Minority Affairs Division

Subject: ACDBE Compliance Review for the Non-Exclusive Luggage Cart Concession  
Program at MIA, RFP No. MDAD-08-05

The Minority Affairs Division has completed its review of the above referenced project for compliance with the Airport Concession Disadvantaged Business Enterprise ("ACDBE") Program as per the requirements of the Code of Federal Regulations 49 C.F.R., Part 23 Concessions. The goal applicable to this Request for Proposal ("RFP") is an ACDBE goal of 20% of gross revenues. The MDAD Contracts Administration Division submitted RFP documents from four Proposers to the Minority Affairs Division for the ACDBE Program Compliance Review:

**Bagport America, LLC** submitted the required ACDBE Utilization Form, Schedule of Participation By ACDBE Firms and ACDBE Letter(s) of Intent, committing to 25% of gross revenues, utilizing Ultra Aviation Services, Inc., for staffing, technical support and maintenance. Bagport America, LLC is in compliance with the ACDBE participation goal of 20% of gross revenues and the Code of Federal Regulations 49 C.F.R. Part 23 (Attachment 1).

**TopCart Orlando, LLC** submitted the required ACDBE Utilization Form, Schedule of Participation By ACDBE Firms and ACDBE Letter(s) of Intent, committing to 20% of gross revenues, utilizing Quest Corporation of America for marketing, advertisement, web design and market research for 5% of gross revenues and ACE Staffing for management, staffing, payroll, and other services for 15% of gross revenues. TopCart Orlando, LLC is in compliance with the ACDBE participation goal of 20% of gross revenues and the Code of Federal Regulations 49 C.F.R. Part 23 (Attachment 2).

**Smarte Carte, Inc.** submitted the required ACDBE Utilization Form, Schedule of Participation By ACDBE Firms and ACDBE Letter(s) of Intent, committing to 23% of gross revenues, utilizing Baggage Protection System, Inc. for staffing personal. Smarte Carte, Inc. is in compliance with the ACDBE participation goal and the Code of Federal Regulations 49 C.F.R. Part 23 (Attachment 3).

**Flight Services & Systems, Inc.** submitted the required ACDBE Utilization Form and Schedule of Participation By ACDBE Firms, committing to 20% of equipment cost, for the installation and maintenance of equipment, utilizing Commercial Interiors Contractors, Corp.

AnaMaria Saks  
ACDBE Compliance Review  
Non-Exclusive Luggage Cart Concession Program  
RFP No. MDAD-08-05  
October 31, 2006  
Page 2

A review of the Code of Federal Regulations 49 C.F.R. Part 23.55(k) states: "Do not count costs incurred in connection with the renovation, repair, or construction of a concession facility." Therefore, the installation and maintenance of equipment cannot be counted towards the ACDBE goal of 20% of gross revenues. Additionally, no ACDBE Letter(s) of Intent was submitted with its proposal, as required.

On October 4, 2006, Minority Affairs staff advised the MDAD Assistant County Attorney of our findings and requested a legal opinion. On October 30, 2006 the MDAD Assistant County Attorney provided a legal opinion, which stated that the proposal submitted by Flight Services & Systems, Inc. is non-responsive (Attachment 4).

If any of the certified ACDBE Firms listed on the Schedule of Participation By ACDBE Firms and ACDBE Letter(s) of Intent are found not to be eligible, they must be substituted in accordance with Section V and Section VI of the ACDBE Participation Plan/Provision in the proposal documents. Please note that Minority Affairs staff only reviewed and addressed compliance with the ACDBE Program.

If you have any questions or need additional information, please contact me at (305) 876-7971.

Attachments (4)

mah

cc: J. Abreu  
R. Wood  
M. Southwell  
P. Ryan  
M. Clark-Vincent  
A. Tecle  
W. Brown  
Clerk of the Board  
Project File

# Appendix C – Airport Concession Disadvantaged Business Enterprises Participation Plan / Provision



## DEMONSTRATION OF GOOD FAITH EFFORTS ACDBE UTILIZATION FORM

[Forms ACDBE Utilization Form, Schedule of Participation and Letter of Intent are provided as part of the solicitation documents.]

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space).

- X The bidder/offeror is committed to a minimum of 25 % ACDBE utilization in this Contract.
- n.a. The bidder/offeror (if unable to meet the ACDBE goal of \_\_\_\_\_ %) is committed to a minimum of \_\_\_\_\_ % ACDBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: bagport America LLC

State Registration No. Florida, L06000086068

By: Stefan Andersson  
(Signature)

Title: CEO

Stefan Andersson  
(Print Name)

Date: Sept 08, 2006

ATTACHMENT 1

ACDBE APPENDIX 1

8

110

Revised February 24, 2006

96

Proposal for Miami International Airport

# SCHEDULE OF PARTICIPATION BY ACDBE FIRMS

Listed below is the information pertaining to “certified” ACDBE firms who will be participating in this contract.

[illegible]

Form to be completed and signed by the Bidder/Proposer. I certify that the representation contained in this Schedule of Participation are to the best of my knowledge true and accurate.

Steve Auer

Sept 08, 2006

Signature of Proposer

Date \_\_\_\_\_

Stefan Andersson

CEO

bagport America LLC

Print Name \_\_\_\_\_

[illegible]

Company Name

ACDBE APPENDIX 2

9

**Rev. 2/24/06**

# Proposal for Miami International Airport





LETTER OF INTENT  
AIRPORT CONCESSION DISADVANTAGED BUSINESS  
ENTERPRISE PARTICIPATION

To: Miami-Dade County, Clerk of the Board

Project: Luggage Cart Concession Program

Contract Number: RFP No. MDAD-08-05 Total % of Bidder/Proposal: 25 %

The undersigned holds ACDBD Certificate No. 10009 expiring on, May 31 20 07.

The undersigned intends to perform the following work in connection with the above Bid/  
Proposal (Describe): staffing, maintenance, technical support

Description of Services	% of Bid/Proposal
<u>staffing for cart retrieval,</u>	<u>25 %</u>
<u>maintenance of carts and CMUs,</u>	
<u>technical support</u>	

Total% 25 %

Signature Raul R. Dube  
of ACDBE

Date Sept 06, 2006

Print Name Raul R. Dube

Title President

ACDBE Firm Ultra Aviation Services, Inc.

ACDBE APPENDIX 3



DEPARTMENT OF  
BUSINESS DEVELOPMENT

May 11, 2004

Raul Dube  
ULTRA AVIATION SERVICES, INC.  
Mia P O Box 996548,  
Miami, FL 33299-6548

CERT. NO: 3970  
APPROVAL DATE(s): 06/01/2004 - DBE  
EXPIRATION DATE: 05/31/2007

Dear Raul Dube:

The Department of Business Development has completed its review of your application and attachments submitted for certification as a Disadvantaged Business Enterprise (DBE) and hereby approves your firm as a DBE in the categories listed below. Your DBE certification is valid for three (3) years, expiring as noted above and your firm will be included in our registry of certified business.

While Disadvantaged Business Enterprise (DBE) certification qualifies your firm to bid and participate on projects with DBE participation requirements, please note that this certification does not allow you to participate on projects with Black, Hispanic, Women and/or Community Small Business Enterprise (BBE/HBE/WBE/CSBS) program requirements unless you are specifically certified in these programs. Please note that certification as a small and/or minority business enterprise continues to be valid for one (1) year.

If any changes occur within your company during the certification period (such as ownership, address, telephone number, trade category, licensing, technical certification, bonding capacity, or if the business ceases to exist) you must notify this office in writing immediately. It is imperative that we maintain current information on your company at all times. All inquiries or changes related to this certification should be directed to the Certification Unit between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday. This department will forward to you an application for re-certification (a much shorter process) within four (4) weeks of the above expiration date.

We look forward to your participation in Miami-Dade County's small, minority and/or disadvantaged business programs.

Sincerely,

Marsha Jackman  
Director, DBD

CATEGORIES: (Your firm may bid or participate on contracts only under these categories)  
All Other Transit And Ground Passenger Transportation (DBE)

MINORITY AFFAIRS  
2004 MAY 24 AM 8:04



1c3

**DEMONSTRATION OF GOOD FAITH EFFORTS**  
**ACDBE UTILIZATION FORM**

*[Forms A CDBE Utilization Form, Schedule of Participation and Letter of Intent are provided as part of the solicitation documents.]*

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space).

  X   The bidder/offeror is committed to a minimum of   20   % ACDBE utilization in this Contract.

           The bidder/offeror (if unable to meet the ACDBE goal of        %) is committed to a minimum of        % ACDBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm:   TopCart Orlando Llc  

State Registration No.   L01000017067  

By:           M. S. 1/1            
                    (Signature)

Title:   Managing Director  

  Melih Dülğar    
                    (Print Name)

Date:   9/6/06  

**ATTACHMENT 2**



**LETTER OF INTENT**  
**AIRPORT CONCESSION DISADVANTAGED BUSINESS**  
**ENTERPRISE PARTICIPATION**

To: Topcart Orlando llc

Project: Luggage Cart Concession Program

Contract Number: n/a Total % of Bidder/Proposal: 15%

The undersigned holds ACDBD Certificate No. \_\_\_\_\_ expiring on, Aug. 20 07.

Certified by Goaa

The undersigned intends to perform the following work in connection with the above Bid/Proposal (Describe):

**Description of Services**

Staffing, Management, Payroll and other  
Services

Signature  
of ACDBE

V. M. 2

Total %

15

Date

09/06/06

Print Name

VA Putol.

Title

Manager

ACDBE Firm

Are Staffing Inc.

LETTER OF INTENT  
AIRPORT CONCESSION DISADVANTAGED BUSINESS  
ENTERPRISE PARTICIPATION

To: Topcart Orlando IIc

Project: Luggage Cart Concession Program

Contract Number: n/a Total % of Bidder/Proposal: 5%

The undersigned holds ACDBD Certificate No. see attached Certification letter expiring on, 20

The undersigned intends to perform the following work in connection with the above Bid/  
Proposal (Describe): \_\_\_\_\_

Description of Services

% of Bid/Proposal

A. Advertising Sales	}	5%
B. Web Design		
C. Market Survey		

Total% 5%

Signature  
of ACDBE

Sharlene Lainscy

Date

8/29/06

Print Name

Sharlene Lainscy

Title

President/Owner

ACDBE Firm

Quest Corporation of America, Inc.

ACDBE APPENDIX 3



August 31, 2006

## Certified Mail – Return Receipt Requested

Mrs. Prity Patel  
Ace Staffing Services, Inc.  
6304 Old Cheney Highway  
Orlando, FL 32807

**ANNIVERSARY DATE – Annually, on August 29, 2006**

Dear Mrs. Patel:

The Greater Orlando Aviation Authority [GOAA] is pleased to announce that your firm has been certified as a **Disadvantaged Business Enterprise [DBE]** in Florida, under a **Unified Certification Program [UCP]** in accordance with 49 CFR, PART 26.

DBE certification is continuing from the date of this letter, but is contingent upon the firm renewing its eligibility annually through this office. You will be notified in advance of your obligation to continue eligibility in a timely fashion. Failure to continue your eligibility will result in immediate action to decertify the firm.


As long as the firm is listed in the DBE Directory, it is considered DBE Certified by all Florida UCP Members.

DBE Certification is subject to actions by governmental agencies impacting the disadvantaged status of the firm.

Your firm will be listed in Florida's **UCP DBE Directory** which can be accessed via the internet, at <http://www.bipincwebapps.com/biznetflorida/> or through FDOT's website at [www.dot.state.fl.us/equalopportunityoffice](http://www.dot.state.fl.us/equalopportunityoffice) and by "clicking" on "DBE Directory" in the left hand margin, then "clicking" on "Directory" near the bottom of the page.

DBE certification is **NOT** a guarantee of work, but enables the firm to compete for, and perform, contract work on all USDOT Federal Aid (FAA, FTA and FHWA) projects in Florida as a DBE contractor, sub-contractor, consultant, sub-consultant or material supplier.

If, at any time, there is a material change in the firm, including, but not limited to, ownership, officers, Directors, scope of work being performed, daily operations, affiliations with other businesses or individuals or physical location of the firm, you must notify this office, in writing, without delay. Notification should include supporting



# Florida Department of Transportation

JEB BUSH  
GOVERNOR

605 Suwannee Street  
Tallahassee, FL 32399-0450

JOSÉ ABREU  
SECRETARY

February 25, 2004

Quest Corporation of America, Inc.  
Ms. Sharlene Francois, President  
3837 Northdale Blvd. #242  
Tampa, FL 33624

## RE: DISADVANTAGED BUSINESS ENTERPRISE CERTIFICATION

Dear Ms. Francois:

The Department is pleased to announce that your company has been certified as a Disadvantaged Business Enterprise (DBE) which is subject to continued eligibility and also subject to actions of any other governmental agencies which may affect the minority status of your firm. This agency's certification enables the company to compete for Department work as a minority owned and operated company. It is not a guarantee that the company will receive work.

DBE certification by the Department shall be for a period of three (3) years. On each anniversary date during the three (3) year certification period an Affidavit of Continuing Eligibility must be submitted. If at any time there is a change in the ownership and control of the company, a new Schedule A is to be forwarded without delay to the Department. For recertification at the end of the three (3) year period a new Schedule A must be submitted to the Department ninety (90) days prior to expiration of your current certification.

Your firm can participate in FDOT contracts for DBE credit in the following specialty codes 300-Consultants (by type of service), 963-Economic Consultant Services, 964-Education Consultant, 968-Public Relations Services, 980-Other Business Services (NEC), and 190-Miscellaneous Construction Services.

Questions concerning the certification process may be directed to this office at (850) 414-4747.

Sincerely,



John Goodman  
Certification Manager

JG:pb

**CERTIFICATION EXPIRATION DATE:**

**March 4, 2007**

06204



Quest Corporation of America

**Corporate Office**

3837 Northdale Blvd.,  
#242

Tampa, Florida 33624

Phone: (813) 926-2942

Fax: (813) 926-2962

corporate@qca-inc.com

www.qca-inc.com

Date: May 11, 2006

**CERTIFICATION OF DISADVANTAGED BUSINESS ENTERPRISE STATUS**

I certify that Miami-Dade County recognizes Quest Corporation of America, Inc. as a certified DBE, and we accept their certification from FDOT.

Effective July 1, 2005, the United States Department of Transportation recipient transportation agencies in Florida, including Miami-Dade and the Florida Department of Transportation, began participating in a Florida Uniform Certification Program (UCP) Disadvantaged Business Enterprise (DBE) Certification. As a result, DBE certification is valid between all UCP members in the state of Florida.

Signed by:

For  
Lillian Garcia  
DEPARTMENT OF BUSINESS DEVELOPMENT  
STEPHEN P. CLARK CENTER  
111 NW 1st Street, 19th Floor  
MIAMI, FL 33128  
PH: (305) 375-3111  
Fax: (305) 375-3170  
Website: www.miamidade.gov/dbd

**DEMONSTRATION OF GOOD FAITH EFFORTS**  
**ACDBE UTILIZATION FORM**

*[Forms ACDBE Utilization Form, Schedule of Participation and Letter of Intent are provided as part of the solicitation documents.]*

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space).

  X   The bidder/offeror is committed to a minimum of   23   % ACDBE utilization in this Contract.

\_\_\_\_\_ The bidder/offeror (if unable to meet the ACDBE goal of \_\_\_\_\_%) is committed to a minimum of \_\_\_\_\_% ACDBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: Smarte Carte, Inc.

State Registration No. 844726

By: Gautam S. Kulkarni  
(Signature)

**Title:** Executive Vice President & CFO

Garret S. Roosma  
(Print Name)

Date: August 8, 2006

**ATTACHMENT 3**

ACDBE APPENDIX 1

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Revised: February 24, 2006

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# SCHEDULE OF PARTICIPATION BY ACDBE FIRMS

Listed below is the information pertaining to “certified” ACDBE firms who will be participating in this contract.

[illegible]

Form to be completed and signed by the Bidder/Proposer. I certify that the representation contained in this Schedule of Participation are to the best of my knowledge true and accurate.

*Sant S. Rosma*

**Signature of Proposer**

August 8, 2006

**Date**

Garret S. Roosma

**Executive Vice President & CFO**

Smarte Carte, Inc.

Print Name \_\_\_\_\_

**Title**

Company Name

## ACDBE APPENDIX 2

**LETTER OF INTENT  
AIRPORT CONCESSION DISADVANTAGED BUSINESS  
ENTERPRISE PARTICIPATION**

To: Smarte Carte, Inc. and Miami-Dade Aviation Department

Project: Non Exclusive Luggage Cart Concession Program

Contract Number: MDAD-08-05 Total % of Bidder/Proposal: 23%

The undersigned holds ACDBD Certificate No. 7674 expiring on, 9-30 20 07.

The undersigned intends to perform the following work in connection with the above Bid/  
Proposal (Describe): below

Description of Services	% of Bid/Proposal
Global Baggage Protection Systems, Inc.	23%
shall provide Smarte Carte, Inc. with all	
full-time and part-time labor (excluding	
salaried management personnel) required	
to conduct the daily operation of the luggage	
cart concession at Miami International Airport.	

Total% 23%

Signature  
of ACDBE

[Signature]

Date

7/28/2006

Print Name

RADAMES VILLALON

Title

PRESIDENT

ACDBE Firm

GLOBAL BAGGAGE PROTECTION SYSTEMS INC.

ACDBE APPENDIX 3

ADA Coordination  
Agenda Coordination  
Air in Public Places  
Aids and Management Services  
Analysis  
Building Code Compliance  
Building  
Business Development  
Capital Improvements  
Citizen's Independent Transportation Trust  
Communications  
Community Action Agency  
Community & Economic Development  
Contractual Relations  
Contract Services  
Corrections & Rehabilitation  
Countywide Healthcare Planning  
Criminal Affairs  
Electricity  
Emergency Management  
Employee Relations  
Enterprise Technology Services  
Environmental Resources Management  
Fair Employment Practices  
Finance  
Fire Dept. II  
General Services Administration  
Hazardous Waste  
Homeless Unit  
Housing Agency  
Housing Finance Authority  
Human Services  
Independent Review Panel  
International Trade Committee  
Juvenile Assessment Center  
Medical Facilities  
Metropolitan Housing Organization  
Park and Recreation  
Parsons and Young  
Police  
Procurement Management  
Property Acquisition  
Public Library System  
Public Works  
Safe Neighborhoods Unit  
Seaport  
Solid Waste Management  
Strategic Business Management  
Team Metro  
Transit  
Urban Revitalization Task Force  
Viscaya Museum and Gardens  
Water and Sewer

September 21, 2004

Radames Villalon  
GLOBAL BAGGAGE PROTECTION SYSTEMS,  
INC.  
4050 NW 29 St.  
Miami, Fl. 33142-0000

CERT. NO: 7674  
APPROVAL DATE(s): 10/01/2004 - DBE  
EXPIRATION DATE: 09/30/2007

Dear Radames Villalon:

The Department of Business Development has completed its review of your application and attachments submitted for certification as a Disadvantaged Business Enterprise (DBE) and hereby approves your firm as a DBE in the categories listed below. Your DBE certification is valid for three (3) years, expiring as noted above and your firm will be included in our registry of certified business.

While DBE certification qualifies your firm to bid and participate on projects with DBE participation requirements, please note that this certification does not allow you to participate on projects with Black, Hispanic, Women, Community Small Business Enterprise, and/or Community Business Enterprise (BBE/HBE/WBE/CSBE/CBE) program requirements unless you are specifically certified in these programs. Please note that certification as a small and/or minority business enterprise continues to be valid for one (1) year.

If any changes occur within your company during the certification period (such as ownership, address, telephone number, trade category, licensing, technical certification, bonding capacity, or if the business ceases to exist) you must notify this office in writing immediately. It is imperative that we maintain current information on your company at all times. All inquiries or changes related to this certification should be directed to the Certification Unit between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday. This department will forward to you an application for re-certification (a much shorter process) within four (4) weeks of the above expiration date.

We look forward to your participation in Miami-Dade County's small, minority and/or disadvantaged business programs.

Sincerely,

*Marsha Jackman*  
Marsha Jackman  
Director, DBD

CATEGORIES: (Your firm may bid or participate on contracts only under these categories)  
Other Airport Operations (DBE)  
Airport Operations (DBE)

00010034

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MEMORANDUM

TO: William A. Brown  
Minority Affairs Division, MDAD

FROM: Roy Wood *Roy Wood*  
Assistant County Attorney

DATE: October 30, 2006

RE: RFP No. MDAD 08-05 - Luggage Carts Concession Responsiveness  
Opinion

By memorandum dated 4 October, 2006, you have requested an opinion as to the responsiveness of the response submitted by Flight Services & systems, Inc., to the subject Request for Proposal (RFP). In our opinion, that response is not responsive.

The issue of responsiveness deals with whether the proposer has furnished the documents or information required by the RFP. Omissions or departures from such requirements may be waived or cured by late submission where the effect of such waiver or cure will not deprive the county of the assurance that the contract will be performed according to specifications, and the waiver or cure will not adversely affect the competitive process. See Robinson Electric Co., Inc. v. Dade County, 417 So.2d 1032, 1034 (Fla. 3 DCA 1982); 10 McQuillin Municipal Corporations Sections 29.65, 29.68 n3.

The facts were stated in your October 4 memorandum indicate that the Proposer's ACDBE firm, Commercial Interior Contractors Corp, will perform installation and maintenance of equipment and be compensated for that service by receiving 20% of the equipment cost. You state in your memorandum that these provisions conflict with CFR 49, Part 23, Subsections 23.55 ( c ), ( k ), and with Section 5, page IP-36, of the RFI.

These deficiencies cannot be cured by late submission; because, to permit that would undermine the competitive process by allowing material changes to be made in the Proposer's sub-agreement with its ACDBE firm after the proposals have been opened and disclosed.

Cc: Ana Maria Saks  
Contracting Officer, Contracts Admin. Div. MDAD

ATTACHMENT 4



**DEMONSTRATION OF GOOD FAITH EFFORTS**  
**ACDBE UTILIZATION FORM**

[Forms ACDBE Utilization Form, Schedule of Participation and Letter of Intent are provided as part of the solicitation documents.]


The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space).

  ✓   The bidder/offeror is committed to a minimum of 20 % ACDBE utilization in this Contract.

       The bidder/offeror (if unable to meet the ACDBE goal of \_\_\_\_\_ %) is committed to a minimum of \_\_\_\_\_ % ACDBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: FLIGHT SERVICES + SYSTEMS, INC

State Registration No. FO6000005366

By:  Title: CEO  
(Signature)  
ROBERT WEITZEL Date: 8/31/06  
(Print Name)

ACDBE APPENDIX 1

**MIAMI-DADE AVIATION DEPARTMENT**  
**REQUEST FOR PROPOSALS FOR**  
**NON-EXCLUSIVE LUGGAGE CART CONCESSION PROGRAM AT**  
**MIAMI INTERNATIONAL AIRPORT**  
**RFP NO. MDAD-08-05**

**SUMMARY MINUTES OF PUBLIC HEARING**  
**MONDAY, NOVEMBER 13, 2006**

The following Evaluation/Selection Committee members met on November 13, 2006 at the Miami-Dade Aviation Department, Miami International Airport Hotel, Concourse E, 7<sup>th</sup> Floor, Conference Rooms E and F to hear presentations from interested proposers and conclude the Committee's selection of one (1) firm for the RFP for Non-Exclusive Luggage Cart Concession Program at Miami International Airport.

**EVALUATION SELECTION COMMITTEE**

AnaMaria Saks, MDAD (Non-voting, Chairperson)  
Sarah Abate, MDAD  
Luis Arce, MDAD  
Sheri McGriff, DBD  
Zainab Salim, MPO

**SUPPORT STAFF**

Roy Wood, CAO  
Patricia Ryan, MDAD  
Betty Ortiz-Valdez, MDAD

Ms. AnaMaria Saks, Chairperson, opened the public meeting with the introduction of the Selection Committee members and followed with oral presentations from the proposers listed below.

<b>FIRMS</b>	<b>SPEAKERS</b>
Topcart Orlando LLC	Melih Dülger, Managing Director
	Johann Frank, President
	Louis Manuel Hillman-Waller
Bagport America LLC	Sven Stohn, COO
	Desma Reid-Coleman, CIO
	Christopher, Harz, Manager America
	Raul Dube
	Wolfgang Kratzenberg, CEO

FIRMS	SPEAKERS
SmarteCarte, Inc.	Michael J. Multer, Sr. Dir Bus Dev.
	Frank Bonnewitz, Sr. Dir of Ops.
	Lazaro Herrera, Area Manager
	Arthur Spring, Sr. VP Bus Dev

All of the above listed proposers representatives registered as lobbyists specifically for this oral presentation pursuant to the requirements of Section 2-11. 1 (s) of the Miami-Dade County Code.

The Committee then proceeded to individually rank the proposers as shown on the attached tabulation sheet. The rating and ranking process consisted of two (2) parts as follows: Technical Proposal (Part A) and after the ranking of Part A, Technical Proposal (max of 900 points per voting Committee Member), the Committee proceeded to Part B, Percentage Fee Proposal (maximum of 100 points per voting Committee Member). In determining the overall ranking, it was noted that the second ranked firm (SmarteCarte, Inc.) was a local proposer and was within 5% of the ranking obtained by the first ranked non-local Proposer, Bagport America LLC.

Section 4, Subsection XV of the RFP entitled, Local Business Preference states as follows:

"If, following the completion of final rankings (technical and price combined, if applicable) by the selection committee, a non-local business is the highest ranked Proposer, and the ranking of a local Proposer is within 5% of the ranking obtained by the non-local Proposer, then the highest ranked local Proposer shall have the opportunity to proceed to negotiations with the County under the applicable sections of this Code".

Having applied the Local Preference Provision, SmarteCarte became the first ranked recommended Proposer.

The following action was then taken:

Moved: Luis Arce

Motion: To recommend the local firm SmarteCarte to the County Manager for award of the Agreement for the subject project.

Seconded: Sheri McGriff

Action: Unanimously adopted

The Committee considered the selection criteria stipulated in the Request for Proposals in formulating its recommendation of the best qualified proposers to provide the desired services.

  
AnaMaria Saks  
Chairperson

## APPENDIX B

### MIAMI-DADE AVIATION DEPARTMENT

#### REQUEST FOR PROPOSALS FOR NON-EXCLUSIVE

#### LUGGAGE CART CONCESSION PROGRAM AT MIAMI INTERNATIONAL AIRPORT

RFP-MDAD-08-05

November 13, 2006

#### PERCENTAGE FEE FORM

Example Score: (Proposer Proposed Percentage Fee ÷ Highest Proposed Percentage Fee) x 100 = Price Score  
(The 100 total points were multiplied x 5 representing each voting committee member present at the public hearing meeting)

#### TOPCART ORLANDO LLC

$$\frac{30.50}{\text{(Proposer Proposed Pct. Fee)}} \div \frac{32}{\text{(Highest Proposed Pct. Fee)}} = \underline{.95} \quad \times \frac{400}{\text{Total Points}} = \underline{381.25} \quad \text{Price Score}$$

#### BAGPORT AMERICA LLC

$$\frac{32}{\text{(Proposer Proposed Pct. Fee)}} \div \frac{32}{\text{(Highest Proposed Pct. Fee)}} = \underline{1} \quad \times \frac{400}{\text{Total Points}} = \underline{400} \quad \text{Price Score}$$

#### SMARTECARTE, INC.

$$\frac{25}{\text{(Proposer Proposed Pct. Fee)}} \div \frac{32}{\text{(Highest Proposed Pct. Fee)}} = \underline{.78} \quad \times \frac{400}{\text{Total Points}} = \underline{312.50} \quad \text{Price Score}$$

Minimum percentage fee is 15%

**MIAMI-DADE AVIATION DEPARTMENT**  
**REQUEST FOR PROPOSALS FOR NON-EXCLUSIVE LUGGAGE CART CONCESSION PROGRAM AT MIAMI INTERNATIONAL AIRPORT**  
**RFP NO. MDAD-08-05**  
**OVERALL RESULTS**  
**NOVEMBER 13, 2006**

FIRM	SCORE INDIVIDUAL EVALUATORS					(A)	(B)	(C)	(D)	(E)	(A+D)	OVERALL COMMITTEE ADJUSTED RANKING	FINAL RANKING FOLLOWING APPLICATION OF LOCAL PREFERENCE*
	1	2	3	4	5	TOTAL TECHNICAL POINTS	RANK BASED ON TECHNICAL	PERCENTAGE FEE	POINTS BASED ON PERCENTAGE	RANK BASED ON PERCENTAGE	ADJUSTED SCORE		
Topcart Orlando LLC	810	765		800	760	3,135	3	30.5	381.25	2	3,516.25	3	3
bagport America LLC	825	825		835	835	3,320	1	32	400	1	3,720.00	1	2
SmartCart, Inc.	825	875		735	845	3,280	2	25	312.50	3	3,592.50	2	1

**EVALUATORS:**

Avalonia Saks, MDAD (Chairperson) NON-VOTING	
1. Sarah Abate, MDAD	
2. Luis Arce, MDAD	
3. Hydi Webb, Seaport (Absent)	
4. Zainab Salim, MPO	
5. Shen McGriff, DBD	

Example:	Proposer's Proposed Percentage Fee
Highest Proposed Percentage Fee	x 100* = Price Score
* Per Voting Evaluation/Selection Committee Member	
*Refer to Section 4, Subsection VI formula as listed in the Section of the RFP	

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"If, following the completion of final rankings (technical and price combined, if applicable) by the selection committee, a non-local business is the highest ranked Proposer, and the ranking of a local Proposer is within 5% of the ranking obtained by the non-local Proposer, then the highest ranked local Proposer shall have the opportunity to proceed to negotiations with the County under the applicable sections of this Code.

**MIAMI-DADE AVIATION DEPARTMENT  
REQUEST FOR PROPOSALS FOR NON-EXCLUSIVE LUGGAGE  
CART CONCESSION PROGRAM  
AT MIAMI INTERNATIONAL AIRPORT  
RFP-MDAD-08-05  
November 13, 2006**

**BAGPORT AMERICA LLC**

**EVALUATOR: SARAH ABATE**

EVALUATION FACTORS		MAX. POINT RANGE
Financial Capacity to Perform/Financing		150
POINTS ASSIGNED		140
Experience and Qualifications		250
POINTS ASSIGNED		225
Equipment Design and Function		200
POINTS ASSIGNED		190
Furnishing, Management, Installation, Operation and Maintenance Plan		200
POINTS ASSIGNED		180
ACDBE Plan		100
POINTS ASSIGNED		90
TOTAL EVALUATION POINTS:		825

**MIAMI-DADE AVIATION DEPARTMENT  
REQUEST FOR PROPOSALS FOR NON-EXCLUSIVE LUGGAGE  
CART CONCESSION PROGRAM  
AT MIAMI INTERNATIONAL AIRPORT  
RFP-MDAD-08-05  
November 13, 2006**

**SMARTECARTE, INC.**

**EVALUATOR: SARAH ABATE**

<b>EVALUATION FACTORS</b>	<b>MAX. POINT RANGE</b>
Financial Capacity to Perform/Financing	150
<b>POINTS ASSIGNED</b>	<b>140</b>
Experience and Qualifications	250
<b>POINTS ASSIGNED</b>	<b>240</b>
Equipment Design and Function	200
<b>POINTS ASSIGNED</b>	<b>180</b>
Furnishing, Management, Installation, Operation and Maintenance Plan	200
<b>POINTS ASSIGNED</b>	<b>180</b>
ACDBE Plan	100
<b>POINTS ASSIGNED</b>	<b>85</b>
<b>TOTAL EVALUATION POINTS:</b>	<b>825</b>

**MIAMI-DADE AVIATION DEPARTMENT  
REQUEST FOR PROPOSALS FOR NON-EXCLUSIVE LUGGAGE  
CART CONCESSION PROGRAM  
AT MIAMI INTERNATIONAL AIRPORT  
RFP-MDAD-08-05  
November 13, 2006**

**TOPCART ORLANDO LLC**

**EVALUATOR: SARAH ABATE**

EVALUATION FACTORS		MAX. POINT RANGE
Financial Capacity to Perform/Financing		150
POINTS ASSIGNED		140
Experience and Qualifications		250
POINTS ASSIGNED		220
Equipment Design and Function		200
POINTS ASSIGNED		190
Furnishing, Management, Installation, Operation and Maintenance Plan		200
POINTS ASSIGNED		180
ACDBE Plan		100
POINTS ASSIGNED		80
TOTAL EVALUATION POINTS:		810

**MIAMI-DADE AVIATION DEPARTMENT  
REQUEST FOR PROPOSALS FOR NON-EXCLUSIVE LUGGAGE  
CART CONCESSION PROGRAM  
AT MIAMI INTERNATIONAL AIRPORT**

**RFP-MDAD-08-05  
November 13, 2006**

**SMARTECARTE, INC.**

**EVALUATOR: LUIS ARCE**

EVALUATION FACTORS	MAX. POINT RANGE
Financial Capacity to Perform/Financing	150
POINTS ASSIGNED	150
Experience and Qualifications	250
POINTS ASSIGNED	250
Equipment Design and Function	200
POINTS ASSIGNED	175
Furnishing, Management, Installation, Operation and Maintenance Plan	200
POINTS ASSIGNED	200
ACDBE Plan	100
POINTS ASSIGNED	100
TOTAL EVALUATION POINTS:	875

**MIAMI-DADE AVIATION DEPARTMENT  
REQUEST FOR PROPOSALS FOR NON-EXCLUSIVE LUGGAGE  
CART CONCESSION PROGRAM  
AT MIAMI INTERNATIONAL AIRPORT  
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November 13, 2006**

**BAGPORT AMERICA LLC**

**EVALUATOR: LUIS ARCE**

EVALUATION FACTORS	MAX. POINT RANGE
Financial Capacity to Perform/Financing	150
POINTS ASSIGNED	125
Experience and Qualifications	250
POINTS ASSIGNED	225
Equipment Design and Function	200
POINTS ASSIGNED	200
Furnishing, Management, Installation, Operation and Maintenance Plan	200
POINTS ASSIGNED	175
ACDBE Plan	100
POINTS ASSIGNED	100
TOTAL EVALUATION POINTS:	825

**MIAMI-DADE AVIATION DEPARTMENT  
REQUEST FOR PROPOSALS FOR NON-EXCLUSIVE LUGGAGE  
CART CONCESSION PROGRAM  
AT MIAMI INTERNATIONAL AIRPORT  
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November 13, 2006**

**TOPCART ORLANDO LLC**

**EVALUATOR: SARAH ABATE**

<b>EVALUATION FACTORS</b>	<b>MAX. POINT RANGE</b>
Financial Capacity to Perform/Financing	150
<b>POINTS ASSIGNED</b>	<b>100</b>
Experience and Qualifications	250
<b>POINTS ASSIGNED</b>	<b>225</b>
Equipment Design and Function	200
<b>POINTS ASSIGNED</b>	<b>170</b>
Furnishing, Management, Installation, Operation and Maintenance Plan	200
<b>POINTS ASSIGNED</b>	<b>170</b>
ACDBE Plan	100
<b>POINTS ASSIGNED</b>	<b>100</b>
<b>TOTAL EVALUATION POINTS:</b>	<b>765</b>

**MIAMI-DADE AVIATION DEPARTMENT  
REQUEST FOR PROPOSALS FOR NON-EXCLUSIVE LUGGAGE  
CART CONCESSION PROGRAM  
AT MIAMI INTERNATIONAL AIRPORT  
RFP-MDAD-08-05  
November 13, 2006**

**SMARTECARTE, INC.**

**EVALUATOR: ZAINAB N. SALIM**

<b>EVALUATION FACTORS</b>	<b>MAX. POINT RANGE</b>
Financial Capacity to Perform/Financing	150
<b>POINTS ASSIGNED</b>	<b>140</b>
Experience and Qualifications	250
<b>POINTS ASSIGNED</b>	<b>240</b>
Equipment Design and Function	200
<b>POINTS ASSIGNED</b>	<b>130</b>
Furnishing, Management, Installation, Operation and Maintenance Plan	200
<b>POINTS ASSIGNED</b>	<b>150</b>
ACDBE Plan	100
<b>POINTS ASSIGNED</b>	<b>75</b>
<b>TOTAL EVALUATION POINTS:</b>	<b>735</b>

**MIAMI-DADE AVIATION DEPARTMENT  
REQUEST FOR PROPOSALS FOR NON-EXCLUSIVE LUGGAGE  
CART CONCESSION PROGRAM  
AT MIAMI INTERNATIONAL AIRPORT  
RFP-MDAD-08-05  
November 13, 2006**

**BAGPORT AMERICA LLC**

**EVALUATOR: ZAINAB N. SALIM**

<b>EVALUATION FACTORS</b>	<b>MAX. POINT RANGE</b>
Financial Capacity to Perform/Financing	150
<b>POINTS ASSIGNED</b>	<b>145</b>
Experience and Qualifications	250
<b>POINTS ASSIGNED</b>	<b>240</b>
Equipment Design and Function	200
<b>POINTS ASSIGNED</b>	<b>190</b>
Furnishing, Management, Installation, Operation and Maintenance Plan	200
<b>POINTS ASSIGNED</b>	<b>170</b>
ACDBE Plan	100
<b>POINTS ASSIGNED</b>	<b>90</b>
<b>TOTAL EVALUATION POINTS:</b>	<b>835</b>

**MIAMI-DADE AVIATION DEPARTMENT  
REQUEST FOR PROPOSALS FOR NON-EXCLUSIVE LUGGAGE  
CART CONCESSION PROGRAM  
AT MIAMI INTERNATIONAL AIRPORT  
RFP-MDAD-08-05  
November 13, 2006**

**TOPCART ORLANDO LLC**

**EVALUATOR: ZAINAB N. SALIM**

EVALUATION FACTORS	MAX. POINT RANGE
Financial Capacity to Perform/Financing	150
POINTS ASSIGNED	130
Experience and Qualifications	250
POINTS ASSIGNED	230
Equipment Design and Function	200
POINTS ASSIGNED	190
Furnishing, Management, Installation, Operation and Maintenance Plan	200
POINTS ASSIGNED	170
ACDBE Plan	100
POINTS ASSIGNED	80
TOTAL EVALUATION POINTS:	800

**MIAMI-DADE AVIATION DEPARTMENT  
REQUEST FOR PROPOSALS FOR NON-EXCLUSIVE LUGGAGE  
CART CONCESSION PROGRAM  
AT MIAMI INTERNATIONAL AIRPORT  
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November 13, 2006**

**SMARTECARTE, INC.**

**EVALUATOR: SHERI MCGRUFF**

<b>EVALUATION FACTORS</b>	<b>MAX. POINT RANGE</b>
Financial Capacity to Perform/Financing	150
<b>POINTS ASSIGNED</b>	<b>140</b>
Experience and Qualifications	250
<b>POINTS ASSIGNED</b>	<b>250</b>
Equipment Design and Function	200
<b>POINTS ASSIGNED</b>	<b>180</b>
Furnishing, Management, Installation, Operation and Maintenance Plan	200
<b>POINTS ASSIGNED</b>	<b>180</b>
ACDBE Plan	100
<b>POINTS ASSIGNED</b>	<b>95</b>
<b>TOTAL EVALUATION POINTS:</b>	<b>845</b>

**MIAMI-DADE AVIATION DEPARTMENT  
REQUEST FOR PROPOSALS FOR NON-EXCLUSIVE LUGGAGE  
CART CONCESSION PROGRAM  
AT MIAMI INTERNATIONAL AIRPORT  
RFP-MDAD-08-05  
November 13, 2006**

**BAGPORT AMERICA LLC**

**EVALUATOR: SHERI MCGRUFF**

EVALUATION FACTORS		MAX. POINT RANGE
Financial Capacity to Perform/Financing		150
POINTS ASSIGNED		140
Experience and Qualifications		250
POINTS ASSIGNED		230
Equipment Design and Function		200
POINTS ASSIGNED		190
Furnishing, Management, Installation, Operation and Maintenance Plan		200
POINTS ASSIGNED		175
ACDBE Plan		100
POINTS ASSIGNED		100
TOTAL EVALUATION POINTS:		835

**MIAMI-DADE AVIATION DEPARTMENT  
REQUEST FOR PROPOSALS FOR NON-EXCLUSIVE LUGGAGE  
CART CONCESSION PROGRAM  
AT MIAMI INTERNATIONAL AIRPORT  
RFP-MDAD-08-05  
November 13, 2006**

**TOPCART ORLANDO LLC**

**EVALUATOR: SHERI MCGRUFF**

<b>EVALUATION FACTORS</b>	<b>MAX. POINT RANGE</b>
Financial Capacity to Perform/Financing	150
<b>POINTS ASSIGNED</b>	<b>130</b>
Experience and Qualifications	250
<b>POINTS ASSIGNED</b>	<b>200</b>
Equipment Design and Function	200
<b>POINTS ASSIGNED</b>	<b>190</b>
Furnishing, Management, Installation, Operation and Maintenance Plan	200
<b>POINTS ASSIGNED</b>	<b>150</b>
ACDBE Plan	100
<b>POINTS ASSIGNED</b>	<b>90</b>
<b>TOTAL EVALUATION POINTS:</b>	<b>760</b>